



## CAPIC CONSULTATION PAPER CONCERNING THE ONTARIO IMMIGRATION ACT, 2015

The Honourable Michael Chan,  
Ministry of Citizenship, Immigration and International Trade  
6th floor, 400 University Avenue  
Toronto, Ontario M7A 2R9

**December 1st, 2015**

Dear Honourable Michael Chan,

The Canadian Association of Professional Immigration Consultants (CAPIC) welcomes the opportunity to provide comments to the Government of Ontario on the *Ontario Immigration Act, 2015* and its draft regulations.

### ***Background***

CAPIC was formed ten years ago on the pillars of education, information, lobbying and recognition. In 2014, CAPIC was formally recognized by the Government of Canada as the association representing the Regulated Canadian Immigration Consultants (RCICs). We are proud to be the voice of the RCIC community in Canada's immigration domain.

CAPIC works closely with the Immigration Consultants of Canada Regulatory Council (ICCRC), the Canadian Regulator of the RCIC profession.

Since ICCRC became the Regulator in June, 2011, it has established an extensive *By-law* and detailed Regulations to protect the consumers of immigration services and to govern the work of RCICs, including Regulations related to:

- *Client Accounts;*
- *Client File Management;*
- *Continuing Professional Development;*
- *Dues, Fees, Fines and Penalties;*
- *Practice Management Education;*
- *Compliance Audit and,*
- *Retainer Agreements*

In addition to Regulation, ICCRC has developed a comprehensive *Code of Professional Ethics* – the ethical compass for RCICs – which establishes the highest standards of professional conduct for RCICs and provides detailed conduct guidance for ICCRC members. In terms of solicitor-client privilege, it requires RCICs to hold at all times any information concerning the personal and business affairs of their Clients in strict confidence.



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If consumers have any issues with the immigration services provided by an RCIC, they can contact ICCRC directly to file a complaint. The *Retainer Agreement Regulations* provide for mandatory inclusion of detailed guidance for RCIC Clients on the complaints resolution process.

To fulfill ICCRC's mandate of protecting the public by ensuring members operate their practice in a professional and ethical manner in accordance with ICCRC's *By-law, Code of Professional Ethics* and Regulations, all RCICs are audited for compliance annually by ICCRC.

### *The Ontario Immigration Act, 2015*

CAPIC is pleased to see that the *Ontario Immigration Act, 2015* (hereafter referred to as "the Act") does not appear to present any conflict between its provisions and the role of ICCRC as the regulator of Canada's immigration consultants. Specifically, we note that the Act respects the authority of ICCRC by not introducing a registry of "representatives". This wise decision avoids divergence from the 2001 Supreme Court of Canada determination that where there is a conflict between provincial and federal jurisdiction concerning the regulation of immigration consultants, federal legislation prevails (the paramountcy doctrine)<sup>1</sup>. CAPIC is also pleased that the Act (sub-section 1.1, interpretation) notes that "recruiter...does not include an individual acting as a representative." This provision should avoid any inter-jurisdictional conflict with ICCRC as the federally regulated authority for RCICs.

CAPIC appreciates that the Act only calls for registries for employers and recruiters. In terms of recruiters, which are not federally regulated, we understand the requirement to have a registry for recruiters, in addition to one for employers. And while we are pleased to see, as mentioned above, that the Act does not create a registry of representatives, we do see a potential issue with referrals by our members to recruiters. In that regard, we hope that regulatory provisions will exempt representatives who are not recruiters from being considered recruiters for merely referring someone who makes an inquiry to a registered recruiter in Ontario's planned registry.

CAPIC is concerned about the provisions of section 15 of the Act which specify that a person who acts as a representative shall provide the director with any information that

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<sup>1</sup> *Law Society of British Columbia v. Mangat*, 2001 SCC 67



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is prescribed or that the director specifies. Clearly, we have no problem with our members being asked to provide information we currently provide on the Ontario forms, e.g. RCIC name, office information and ICCRC membership details. We would prefer that this be clarified to indicate that concerning Representatives the information requested is being asked for only to verify that the Representative meets the definition set out in sub-section 14 (1) of the Act.

We have similar concerns about the provisions of sub-section 21 (1) of the Act concerning the collection of personal information:

Naturally, we have no concerns about our members being asked to provide Client information to determine eligibility under the Ontario Immigrant Nominee Program (OINP). However, we respectfully would ask that the Act and related regulations be framed to explicitly exclude information that would be protected under solicitor-client privilege or that breaches a representative's professional obligations to ICCRC. Such privileged information would include, but is not be limited to, requests for client lists, invoices, receipts, solicitor client correspondence and retainer agreements (which are valid and in force under federal law insofar as RCICs are authorized to practice under IRPA and regulated by ICCRC). To provide such information would be a breach of our members' obligations under ICCRC's *Code of Professional Ethics*.

### ***The Draft Ontario Immigration Regulations***

CAPIC recognizes that the majority of the provisions in the draft regulations are drawn from the eligibility criteria currently in use for the OINP. Our members appreciate the ability to work with the staff at CIIT when assisting Clients applying under the OINP. CAPIC welcomes the Ontario Government's effort, through regulation, to enhance transparency and accountability and to improve consistency in the OINP eligibility criteria and the operation of Ontario's selection program.

It is noted that Ontario intends to publicize administrative guidelines on the ministry's website. To protect consumers of immigration services who are all-too-often victims of unauthorized immigration consultants and fraudsters, CAPIC encourages CIIT to provide guidance to applicants concerning authorized representatives. Specifically, to deter the use of unauthorized representatives, Ontario may wish to note on its website that for applicants who engage someone to assist them with their OINP application, the ministry will only deal with members in good standing of one of the regulatory bodies identified in sub-section 14 (1) of the Act.



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### *Compliance and Enforcement Authorities*

CAPIC looks forward to reviewing and providing input on the second set of draft regulations mentioned in Ontario's consultation paper concerning planned compliance and enforcement authorities. Naturally, CAPIC trusts that the comments contained in this submission will be taken into account to ensure the proposed authorities will not infringe upon RCICs' need to continue to respect their obligations as members of the ICCRC; in particular, as they relate to the *Code of Professional Ethics* and the requirement to respect client confidentiality at all times.

### *Conclusion*

On behalf of the members of CAPIC, I would like to thank the Government of Ontario for seeking the views of CAPIC on the new Act and its regulations. We look forward to seeing the second draft of regulations related to compliance and enforcement and to having the opportunity to provide comments on those, once available.

Sincerely,

A handwritten signature in black ink that reads 'D. Jade'.

Dory Jade, RCIC, C.Dir.  
President  
CAPIC-ACCPI