

Alexis Graham
alexis.graham@cic.gc.ca
Director, Immigration Branch, Department of Citizenship and Immigration

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CAPIC Addendum to Submissions - Proposed Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees

The Canadian Association of Professional Immigration Consultants (“**CAPIC**”) makes the below submissions amending and supplementing its original submissions regarding the Proposed Code of Professional Conduct for the College of Immigration and Citizenship Consultants Licensees (the “**Proposed Code**”).

1. Consultation Agreements Should Not be Required

Upon further consideration of the rules of professional conduct applicable to immigration lawyers and paralegals, which require retainer agreements but not “consultation agreements,” CAPIC amends its original submissions relating to section 23 of the Proposed Code on initial consultations and submits that section 23 and its requirement for written consultation agreement should be removed from the Proposed Code, to ensure clients can access equivalent levels of service when hiring any authorized representatives as emphasized in the Preamble. A licensee would still be required to enter into a written service agreement with a client before any immigration or citizenship consulting services beyond summary advice are provided, pursuant to a revised section 24 of the Proposed Code.

As currently drafted, section 23 of the Proposed Code would require written consultation agreements for initial consultations between a licensee and potential clients regarding the provision of immigration or citizenship consulting services. After further reflection, CAPIC is of the view that this requirement represents an unnecessary barrier to the provision of consulting services by licensees that does not exist for lawyers and paralegals offering the same services. The requirement for written, signed consultation agreements could discourage the provision of quick and informal initial advice to potential clients, and compromise accessibility to important services that are often provided for free (and may be provided for free even more frequently in the absence of a requirement to prepare an agreement).

Immigration lawyers (and, in Ontario, paralegals) may offer initial consultations with potential clients in which they provide summary advice on immigration and citizenship matters without entering into a retainer or written agreement of any kind.¹ The preliminary advice offered by licensees during initial consultations is

¹ See the Law Society of Ontario’s Rules for Professional Conduct (“**LSO Rules**”) r. 3.2-1A.2(d), and the Paralegal Rules of Conduct (“**Paralegal Rules**”), r. 3.02(17)(d).

equivalent to the summary advice provided by lawyers and paralegals prior to entering into a retainer agreement since it is, by its very nature, general advice on specific issues that does not amount to full representation of, or engagement by, the potential client.

CAPIC submits that the section 23 consultation agreement requirement places an unnecessary and uneven burden on licensees. There ought to be parity in the treatment and regulation of licensees on the one hand and immigration and citizenship lawyers and paralegals on the other in respect of equivalent services that are as routine as initial consultations. Licensees ought not be subject to client services barriers and administrative obligations from which lawyers and Ontario paralegals are free.

Any client protection concerns at the consultation stage are allayed by the fact that the conduct of licensees is at all times governed by the Proposed Code and subject to the complaints and reporting provisions contained therein. Moreover, written service agreements would still be required if the potential client chooses to engage the services of the licensee after the initial consultation.

Accordingly, CAPIC submits that section 23 of the Proposed Code should be deleted. The phrase “or, if there was an initial consultation, before any additional immigration or citizenship consulting services are provided” should also be deleted from the end of section 24(1) of the Proposed Code. Finally, section 24 should be revised to clarify that a consultation agreement is not required if the immigration or citizenship consulting services consist of summary advice provided in the context of an introductory consultation with a potential client, where the intention is that the consultation, if the potential client so chooses, would develop into an engagement of the licensee. To do so, the following should be added to section 24:

24(5) For greater certainty, subsection (1) does not require a licensee to enter into a written consultation agreement with a client if the services are general immigration and citizenship information or summary advice provided by the licensee during an initial consultation, where the intention is that the consultation, if the potential client so chooses, would develop into an engagement of the licensee for additional immigration or citizenship consulting services.

2. Definition of Client Should Follow Interpretation under LSO Rules

The Proposed Code provides a definition of “client” that mirrors the same definition contained in the Law Society of Ontario’s Rules for Professional Conduct (“**LSO Rules**”) and its Paralegal Rules of Conduct.²

Given the virtually identical language of the definition across these codes of conduct, CAPIC submits that the definition of “client” under the Proposed Code ought to be interpreted in the same way as under the LSO Rules. Such interpretation should refer to and incorporate the commentary provided for the interpretation of that definition in the LSO Rules and, in particular, Commentary 3 under that section as follows:

[3] For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.³

Included in this document is a memorandum from Blake, Cassels, and Graydon LLP in support of this addendum to CAPIC’s submissions regarding section 23 of the Proposed Code.

Sincerely,

Dory Jade, C. Dir.
Chief Executive Officer
CAPIC-ACCPI

² See the LSO Rules, r. 1.1-1, and the Paralegal Rules, r. 1.02.

³ See the LSO Rules, r. 1.1-1, Commentary 3.