

The Honourable Jeremy Harrison
Minister of Immigration and Career Training
Room 346, 2405 Legislative Drive
Regina S4S 0B3
Minister.TED@gov.sk.ca

June 14, 2024

**Re: Canadian Association of Professional Immigration Consultants – Concerns
regarding *The Immigration Services Act***

Dear Minister Harrison:

On behalf of the Canadian Association of Professional Immigration Consultants (CAPIC) which represents nearly 5000 immigration and citizenship consultants (RCICs) who assist newcomers in working, studying, visiting, or moving to Canada, I'd like to bring our concerns regarding the enactment of *The Immigration Services Act* to your attention.

CAPIC submits that provisions in *The Immigration Services Act* dealing with the regulation of RCICs, as well as the enhanced investigative authority and enforcement measures specifically relating to RCICs, including the increased maximum fines and monetary penalties for non-compliance exceed the legislative authority of the Province of Saskatchewan (the Province) and encroach on the federal legislative authority found in sections 91(25) and 91(27) of the *Constitution Act, 1867*.

Before Bill 160 brought *The Immigration Services Act* forward, CAPIC had identified and raised some concerns about its predecessor, i.e., *The Foreign Worker Recruitment and Immigration Services Act*. Both statutes share a common component: they single out RCICs, who are authorized alongside Canadian lawyers and Quebec notaries to practice in Canadian immigration, refugees, and citizenship legal field by subsection 91(2) of the *Immigration and Refugee Protection Act, SC 2001 (IRPA)*, c. 27 and subsection 21.1(2) of



the *Citizenship Act*, RSC 1985, c. C-29, requiring them to be double-licensed by the Province.

To strengthen the double-licence regime, *The Immigration Services Act* introduces significant changes to regulate RCICs by the Province. They include, but are not limited to, the following:

- Requiring RCICs to disclose all their partners and affiliates
- Allowing the ministry to refuse an application for a licence or a certificate of registration to an RCIC if he or she has a confirmed relationship with a non-compliant individual; and
- Increase of the maximum fine for offences to \$750,000 for individuals and \$1,250,000 for corporations, as well as the possibility for administrative monetary penalties.

Below is CAPIC's legal analysis that supports CAPIC's position based on legal research and legal opinion provided by lawyers.

Federal Jurisdiction over Immigration

a. Federal legislation prevails if there is a legislation conflict in shared jurisdictions by the federal and provincial governments

The Supreme Court of Canada has determined that jurisdiction over some aspects of immigration regulation in Canada is shared between the federal and provincial governments (see generally *Law Society of British Columbia v Mangat*, 2001 SCC 67 [*Mangat*]). This "dual aspect" allows both provinces and the federal government to legislate in this area, however, if there is a conflict between the legislation of a province and the legislation of Parliament, the federal legislation must prevail, and the provincial legislation will be of no force or effect (see *Mangat* para. 23). In order for there to be a true conflict between federal and provincial legislation in relation to the same legislative subject matter, it must either (1) be impossible to comply with both the provincial and the federal legislation; or (2) though technically possible to comply with both, the application of the provincial statute is said to frustrate Parliament's legislative purpose.

b. RCICs are federally regulated

RCICs are regulated at the federal level by the College of Immigration and Citizenship Consultants (the “College”), pursuant to the combined effect of three federal statutes: The *College of Immigration and Citizenship Consultants Act*, SC 2019, c. 29, s. 292, IRPA, and the *Citizenship Act* (the “Federal Statutes”). Anyone who wishes to provide Canadian immigration or citizenship advice for consideration, and who is not already a lawyer or a Quebec notary, must have a licence from the College and otherwise comply with the requirements of the Federal Statutes.

c. The double-licence scheme created by The Immigration Services Act frustrates the purpose of the Federal Statutes and thus is inoperative

The Immigration Services Act creates a conflict with the Federal Statutes in two aspects: (1) RCICs who wish to assist clients in immigrating to Saskatchewan are required to comply with the provisions of *The Immigration Services Act* in addition to the requirements set out in the Federal Statutes, and (2) the definitions of both immigration consultant and immigration services are in direct conflict with IRPA, the College Act, and the *Code of Professional Conduct for College of Immigration and Citizenship Consultant Licensees*, SOR/2022-128 (the Code). Therefore, CAPIC believes that *The Immigration Services Act* frustrates the purpose of the Federal Statutes.

Put differently, first, *The Immigration Services Act* effectively prohibits RCICs who do not meet its licensing, disclosure, and information-sharing requirements, but who would otherwise qualify under the Federal Statutes, from providing immigration services if their clients consider Saskatchewan as a potential immigration destination. This is particularly the case, given the broad investigative powers set out in *The Immigration Services Act*. In *R v Lewis* (1997), 155 DLR (4th) 442 (*Lewis*) (a case cited with approval by the Supreme Court of Canada in *Mangat*, at paras 53 and 54), the Court of Appeal for Ontario held that provincial legislation could not limit the range of persons otherwise qualified to work in a federally regulated profession. Second, the excessive disclosure required by *The Immigration Services Act* will place RCICs in an impossible circumstance: to breach the confidentiality required by the Code, a federal regulation enacted under the College Act, to meet such a requirement by this provincial Act. This

meets the test set out for a conflict in operation where the application of the provincial law will displace the legislative purpose of Parliament (*Mangat*, at para. 69).

The purposes of *The Immigration Services Act* are already being realized through the Federal Statutes and the work of the College, which collectively govern immigration consultants in and outside Canada. All immigration consultants who wish to provide immigration services for a fee anywhere must be members of the College and abide by the Code and the regulations and policies of the College. The College is responsible for ensuring that, among other things, RCICs adhere to strict ethical conduct, act with integrity and good faith, provide competent counsel, avoid conflicts of interest, and avoid corrupt associations. RCICs can lose their licence if they fail to adhere to the Code. The scheme purporting to govern RCICs in the province of Saskatchewan under *The Immigration Services Act* is not only duplicative of the Federal Statutes but also oversteps the jurisdiction boundary of the Province where Federal Statutes do not open to provincial legislation to define immigration consultants and their qualifications.

Federal criminal law power

Section 91(27) of the *Constitution Act, 1867* confers on the federal Parliament the exclusive authority to legislate all matters relating to criminal law. *The Immigration Services Act* increases the penalties for offences to \$750,000 for individuals, and \$1,250,000 for corporations, as well as the possibility for administrative monetary penalties. Imprisonment is also a possible punishment for individuals. In CAPIC's view, these are penalties intended to punish RCICs for conduct in relation to morality and public safety and, as such, amounts to an exercise of the criminal law power which, pursuant to s. 91(27) of *The Constitution Act, 1867*, has been given exclusively to the federal government (see generally Reference re *Firearms Act* (Can), 2000 SCC 31 (Firearms Reference)).

The Government of Saskatchewan's expressly stated purpose in adopting *The Immigration Services Act* generally, and increasing the monetary fines specifically, is to deter and respond to immigration fraud. Fraud is a crime under *The Criminal Code of Canada*, and the fact that an alleged fraud takes place in the immigration context does not bring it outside of the federal criminal law power. Moreover, the amounts of the fines contemplated by *The Immigration Services Act*, as well as the maximum term of imprisonment of two years for individuals, clearly suggest that they are intended as punishment.

Charter concerns

CAPIC notes that the increased disclosure and information sharing obligations under *The Immigration Services Act*, particularly when coupled with the broad investigative authority vested in the Director, raises concerns with respect to both confidentiality obligation of RCICs to their clients and the constitutional requirements for legal searches under s. 8 of The Canadian Charter of Rights and Freedoms (the “Charter”).

First, as it relates to RCICs’ confidentiality obligation to their clients required by section 28 of the Code, CAPIC is of the view that there are strong reasons of principle to extend the protections of solicitor-client privilege to immigration consultants. For example, in *Chancey v Dharmdi* (1997), OR (3d) 612, the Ontario Superior Court extended solicitor-client protections to paralegals representing a defendant in proceedings brought under provincial highway traffic legislation. It did so because the advice the paralegal was providing equally required full and candid communication between the person needing legal advice and those able to provide it (para. 22). Moreover, it would mean that those who could afford to hire lawyers to provide them with advice – as can also be the case in the immigration context – will have their communications protected, but those who cannot do so will not have their communications protected, creating a two-tiered system (para. 23). Similar comments were made by the Supreme Court of Canada in *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 45. The new mandatory disclosure and information-sharing requirements under *The Immigration Services Act* could, in certain circumstances, cause RCICs to breach the confidentiality obligation required by the Code and infringe on privilege.

Second, the clients of RCICs have a reasonable expectation of privacy in the context of their dealings with their RCIC (see, e.g., *R v Tessling*, 2004 SCC 63).

Possible unintended consequence concerns

One of the objectives of the enactment of *The Immigration Services Act* is to hold unauthorized representatives (UAPs) accountable. However, all the measures are directed at RCICs instead of UAPs, as UAPs by definition in the Federal Statutes are not immigration consultants. Strengthening the regulation of RCICs would not aid the battle against UAPs. If RCICs are driven away from the Province and avoid recommending the Province as an immigration destination to their clients, it goes contrary to another main



objective of *The Immigration Services Act*, which is to promote immigration to the Province. In addition, RCICs being driven away from the Province may unintentionally create more room for UAPs who always disregard legislation and regulations, which renders a lose-lose situation for the Province and RCICs.

Recommendation

CAPIC recommends the Province working with Immigration, Refugees, and Citizenship Canada and the College to amend *The Immigration Services Act* to respect the division of power set out in the *Constitution Act, 1867* and achieve the intended objectives of this Act.

CAPIC believes that RCICs are a force to defend the integrity of the Canadian immigration system and protect the interests of immigrants and newcomers who are vulnerable. The double-license regime, with good intent, likely may not achieve its main objectives.

I hope the above concerns explained are helpful to you and your team. Being the sole association recognized by the Government of Canada as the voice of RCICs, CAPIC is committed to promoting the ethics and competence of our members and protecting the integrity of the RCIC profession and the Canadian immigration system.

If CAPIC may further assist with the Department, we will be glad to collaborate with you and your team.

Yours Truly,

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Chief Executive Officer
CAPIC-ACCPI

c John Murray
President & CEO, Registrar, CICC

Ms. Jennifer Bowes, MLA, Saskatoon University
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