



CAPIC Submission on the IRB Draft Policy on Disclosing Information regarding the Conduct of Authorized Representatives Regulatory Bodies

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Introduction

The Canadian Association of Professional Immigration Consultants (CAPIC-ACCPI) is the professional Association for regulated Canadian immigration consultants founded on the 4 pillars of education, information, lobbying and recognition. CAPIC-ACCPI leads, connects, protects and develops the profession, serving the best interest of its members.

As the voice for regulated immigration consultants practicing Canadian Immigration, CAPIC is committed to the promotion of high standard of professionalism amongst its members through continued professional education and client focused service excellence. It lobby's and advocates for improved immigration policy for the consumer while protecting the practice of its members.

Preamble

Bill C-35, An Act to Amend the Immigration and Refugee Protection Act, came into force on June 30, 2011, making it an offence for anyone other than an authorized representative to advise or represent a person, for a fee or other consideration, in connection with an application or proceeding under the IRPA. A ministerial regulation was also brought into force on the same day, designating the Immigration Consultants of Canada Regulatory Council (ICCRC) as the new regulator of immigration consultants.

Subsequently an amendment to the Immigration and Refugee Protection Regulations (IRPR) came into force on April 10, 2012, authorizing Citizenship and Immigration (CIC), the Canada Border Services Agency (CBSA) and the Immigration and Refugee Board of Canada (IRB) to disclose information relating to the professional or ethical conduct of representatives, authorized under the Immigration and Refugee Protection Act (IRPA), to their respective governing bodies, when it is determined that the conduct of the person is likely to constitute a breach of their professional or ethical obligations.

This statutory change also enabled the government to make regulations relating to the disclosure of information concerning the professional or ethical conduct of representatives to their respective governing bodies, and to create an oversight mechanism of the governing body designated by the Minister of Citizenship and Immigration to regulate immigration consultants to ensure that the body is serving the public interest. (1)



With the implementation of Bill C-35, *An Act to Amend the Immigration and Refugee Protection Act*, on June 30th, 2011, new regulations under this Act, makes provision for who may be authorized to represent the subject of a proceeding before the Immigration and Refugee Board of Canada (IRB). According to these provisions, the following persons may advise or represent another person before the IRB:

- a member in good standing of the bar of a province (including lawyers or paralegals),
- a member of the Chambre des notaires du Québec, or
- a member of the Immigration Consultants of Canada Regulatory Council (ICCRC).

Counsels who were members in good standing of the former Canadian Society of Immigration Consultants (CSIC) on June 30, 2011 may still advise or represent persons before the IRB until October 28, 2011.

The IRB requires that the Counsel Contact Information form be completed and returned to the IRB Registry office to confirm that counsel is authorized to represent the subject of a proceeding before the IRB. If counsel is charging a fee or receiving other consideration, he or she must be authorized to do so under the *Immigration and Refugee Protection Act* and related regulations.

If counsel is not charging a fee or receiving other consideration for representing the subject of a proceeding, a Notice of Representation without a Fee or other Consideration form must be completed and returned to the IRB Registry Office.

If the IRB does not receive either form, the counsel may not be allowed to represent the subject of a proceeding before the IRB, and the IRB will consider this person to be unrepresented. (2).

In order for the IRB to ensure that it can meet its duty to safeguard the integrity and effectiveness of its processes while providing its' staff accessible and transparent means of raising concerns regarding possible breaches of professional or ethical obligations by the Authorized Representatives (AR), that could undermine the integrity of its' proceedings it has produced a draft policy on disclosing information to the regulatory body of Authorized Representatives which our input is being sought.



Opinion/input on the draft policy

The Canadian Association of Professional Immigration Consultants (CAPIC-ACCPI) having reviewed the draft policy on disclosing information to the Regulatory body commends IRB for the comprehensive draft policy provided to the stakeholders for review and input.

CAPIC fully support the draft policy with some modifications noted below and the intent of this policy which is only to addresses the disclosure of information to the regulatory body of an Authorized Representative. It is our view that counsel appearing before the board should be dealing with the Board and indeed the public, in strict adherence to the high professional and ethical code of conduct imposed on counsel by the applicable regulatory body.

However, by considering the points below in the final policy, IRB will produce a policy that is very sound, clear in process and fair to all stakeholders in the process while maintaining program integrity highly efficient adjudicative system.

Recommendations for consideration

While we support this policy, we feel the need to indicate that when reviewing the subject conduct of an Authorized Representative for possible breach of professional and ethical code of conduct, due regard be given to the fact that counsel/Authorized Representative as advocates for their client are supposed to not only to act professionally and competently through spirited presentation of a case but effectively and courteously while advocating for our mutual client, the applicant appearing before the board.

Additionally, we recommend that to address procedural fairness and natural justice concerns, any and all available records, recording transcripts regarding the alleged misconduct should be made available to and a provision be made for the AR to make submission in response to the alleged breach to IRB for consideration before IRB's final decision on disclosure of information to the ARs' regulatory body.

Finally, while the IRB excludes Ministers' counsel from the application of this policy, there is a need for and we request IRB to consider disclosing such findings to the manager or director of counsel for the Minister. Along the same line, please issue clear policy on how Authorized Representatives can submit legitimate complaint to IRB and DOJ about an unprofessional conduct of Ministers' counsel.



The IRB in a spirit of transparency should give report to the stakeholders of the number of such disclosures to the regulatory bodies of AR and DOJ as well as total number of disclosure for each regulatory body.

Conclusion:

CAPIC-ACCPI commends IRB's proactive approach of developing the subject draft policy and while supporting it, we have recommended slight modifications which we hope that IRB will give due consideration for incorporating in the final policy.

The Canadian Association of Professional Immigration Consultants (CAPIC-ACCPI) as a stakeholder appreciates IRB's ongoing collaboration and dialogue/consultation with the stakeholders in an effort to collectively address issues and policies for continued effectiveness of the tribunals' adjudicative process and program integrity.

We thank IRB for the opportunity to provide this input in the drafting of this important policy.

Respectfully Submitted,



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

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1. IRB website- <http://www.irb-cisr.gc.ca/Eng/NewsNouv/NewNou/2012/Pages/ProDisRep.aspx>.
 2. <http://www.irb-cisr.gc.ca/Eng/NewsNouv/NewNou/2011/Pages/ProDis.aspx>.