



Canadian Association of  
Professional Immigration Consultants

L'Association Canadienne des  
Conseillers Professionnels en Immigration

# CAPIC's Recommendations for Examining Division 18, Part 4 of Bill C-47

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## CAPIC Recommendations for Examining Division 18, Part 4 of Bill C-47

The Canadian Association of Professional Immigration Consultants (CAPIC) has been the driving force behind the establishment of regulations and federal statutes for the profession, ensuring strong rules which sets the parameters for competent and ethical practice by the regulatory body.

The evolution of the profession and recognition of immigration and citizenship consultants has taken more than 30 years to achieve.

CAPIC celebrated the enactment of the *College of Immigration and Citizenship Act*, S.C. 2019, c. 29, s. 292 (the “College Act”), on June 21, 2019, the statute that enshrined the immigration and citizenship consultant profession into law. Section 4 of the College Act defines public protection as the mandate of the regulatory body, the College, in clear terms:

- 4** The purpose of the College is to regulate immigration and citizenship consultants in the public interest and protect the public, including by:
- (a)** establishing and administering qualification standards, standards of practice and continuing education requirements for licensees;
  - (b)** ensuring compliance with the code of professional conduct; and
  - (c)** undertaking public awareness activities.

The profession will continue to evolve and strengthen through regulations, by laws, policies and programs as noted in the recommendations by the Standing Committee on Citizenship and Immigration (CIMM) in its report, “[Starting Again: Improving Government Oversight of Immigration Consultants](#),” in June 2017, that brought the College Act in Bill C-97 into being. The current statutory amendments as noted in the Budget 2023 Impacts Report carry the same purpose for the realization of the objective of the College Act of public protection (see [Annex 3: Legislative Measures, Better Protecting Immigration and Citizenship Clients](#)):

These amendments would allow the College of Immigration and Citizenship Consultants to better function as a public interest regulator, including by implementing a more effective complaints and discipline process, improving overall governance, and enhancing protection from unethical or fraudulent representation.

Based on a comprehensive understanding of the profession, the historical evolution of the College Act, the current landscape of immigration practice, legal counsel's input, and the intent of the amendments proposed in Bill C-47, CAPIC has concerns that the College Act amendments may not serve the intended purpose as noted in the Budget 2023 Impacts Report.

To retain the intent and fulfill the objectives of the College Act, below are CAPIC's recommendations.

## Background

### 1. The birth of Bill C-97

Before Bill C-97, immigration and citizenship consultants were regulated by a body designated by the Minister of Citizenship and Immigration according to the amendments to ss. 91(2) and (5) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), in 2011. This body was the College's predecessor, the Immigration Consultants of Canada Regulatory Council (ICCRC). Though ICCRC had power over its members, immigration and citizenship consultants, as a not-for-profit organization, ICCRC did not have the authority to go after unauthorized practitioners (UAPs) whose common practice was to impersonate immigration and citizenship consultants. In addition, concerns were raised over the relatively low educational threshold required by the ICCRC licensing system and inadequate measures in place for public protection from unethical and incompetent practices.

The CIMM began a thorough study to seek a remedy in 2016. In June 2017, the CIMM laid out its recommendations. While the CIMM recognized that ICCRC had mechanisms in place to hold its members accountable, it pointed out that the educational threshold for licensing should be increased, and adequate public protection measures should be implemented. Further, the CIMM concluded that ICCRC did not have the power to go after UAPs, and that this gap in consumer protection could be closed if ICCRC was a self-regulatory body governed by a stand-alone federal statute. These regulatory measures were among those that laid the groundwork for the next stage of regulation.

### 2. The current immigration and citizenship practice landscape

With the coming into force of the College Act on December 9, 2020, and the launch of the College on November 23, 2021, the College implemented the CIMM's recommendations with respect to regulating immigration and citizenship consultants. It increased the educational requirements, contributed to a more

rigorous *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees*, updated some existing regulations, established different levels of licenses, and developed the Immigration and Refugee Board [Specialization Program](#) for licensees to obtain unrestricted practice, and the [Mentoring Program](#) for new licensees to obtain a foothold in immigration practice.

While CAPIC commends the College for its achievements, the College is still in the early stages of developing mechanisms to fulfill its mandate prescribed in section 4 of the College Act. The regulations of its predecessor, ICCRC, is still to reflect the fundamental change in its role. The mentioned Mentoring and Specialization programs above need to [be improved](#) to ensure the high standard of competency of licensees. Public awareness activities need to be developed in a systematic manner so that stakeholders understand the role of the College, and the public understands their rights when dealing with licensees, and how to distinguish licensees from UAPs.

Most provincial immigration offices still refer to ICCRC in their guides and some list it on their websites. It shows that raising public awareness of the change of the role of the College (despite this change happening well over a year ago) is still much needed. The existence of UAPs remains a gap to be closed in the interest of protecting the public; robust measures should be in place to address the issue of UAPs. One example of The negative impact on the public associated with UAPs is illustrated in *Ge v. Canada (Citizenship and Immigration)*, [2017 FC 594](#), in which one UAP's *clients* (in 57 judicial review applications, heard together) challenged the decisions of an immigration officer refusing their applications on the basis that they contained misrepresentations for failing to disclose their use of an UAP as their representative, contrary to the requirements in IRPA. Each of those challenges was successful on procedural fairness grounds. Despite this result, the [UAP](#) in question appears to be continuing its unauthorized practice: its current website promotes all Canadian immigration programs, including the Quebec program. With IRCC's immigration modernization efforts in October 2022, it moved to a fully online system. This move, unintentionally, has made the practice of UAPs more convenient and more difficult to identify.

Stopping unethical and incompetent practices by licensees is one of the three mandates prescribed in section 4 of the College Act, through ensuring licensee compliance with the *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees*. Comparing the fulfillment of this mandate to the other two relating to establishing qualification and educational standards and raising public awareness, the College is well equipped with its existing measures.

While there is more for the College to develop and tackle with respect of the latter two, giving the College more power for the one adequate mechanism already in place and enacting a broader education mandate for the College when there is the potential for serious, unintended consequences would not improve public protection by any measure.

### 3. Summary of the Amendments

In the Summary section of Bill C-47, the College Act amendments are summarized as follows:

Division 18 of Part 4 amends the *College of Immigration and Citizenship Consultants Act* to, among other things,

- (a) provide that the College of Immigration and Citizenship Consultants may seek an order authorizing it to administer the property of any licensee of the College who is not able to perform their activities as an immigration and citizenship consultant;
- (b) extend immunity against proceedings for damages to directors, employees and agents and mandataries of the College, among others;
- (c) authorize the College to enter into information-sharing agreements or arrangements with any entity, including federal or provincial government institutions; and
- (d) expand the areas in respect of which the Governor in Council may authorize the College to make by-laws.

Item (a) is prescribed by the proposed s. 73.1; item (b) by the amendment of the current s. 56; item (c) by the proposed s. 73.5; and item (d) by the amendment of s. 81(2). There are other changes that are not in the Summary section. One such change is the proposed s. 4(a.1), which adds “establishing and providing training and development programs for licensees” as a mandate of the College.

### 4. Concerns

CAPIC’s general concern is that the amendments provide the College with excessive power over its licensees while failing to introduce measures to address the biggest threat to public protection in immigration: the practice of UAPs. Such practice is a criminal offence pursuant to s. 91(9) of IRPA and ss. 21 and 29.1 of the *Citizenship Act*, RSC, 1985, c. C-29

For the items mentioned above, CAPIC's concerns are as follows:

- The proposed s. 4(a.1): The current three paragraphs of s. 4 of the College Act properly define the College's mandates. Adding "establishing and providing training and development programs for licensees" puts the College in a position of a conflict of interest where it is the regulator of its licensees while also acting as service provider. This proposed amendment cannot enhance the College's purpose of protecting the public. Instead, it could have the unintended consequence of putting the public interest at risk because it inevitably asks the College to self-assess the quality of the programs it delivers.
- The proposed s. 73.1: Section 73.1 raises several serious issues:
  - (i) It permits the College to apply for an order, without notice to the licensee, authorizing the College to administer property relating to a licensee's activities as an immigration and citizenship consultant where the licensee is unable to perform those activities for any prescribed reason. It is unclear what those reasons are, and given that this order may be sought only where there is an alleged failure on the part of the licensee to perform its activities, the licensee ought to be given notice of the application to know the allegations being made against him or her in accordance with the principles of natural justice;
  - (ii) In respect of the order authorizing search and seizure that the Court may issue under s. 73.1(2), the amendment makes no distinction between private residential spaces and business spaces in terms of the "place" that the College could be authorized to enter and search. More than 50% of College licensees operating in Canada work from home. As such, a distinction should be made for entry into a place that is a "dwelling-house", similar to that in s. 51(2) of the College Act, which requires a warrant for entry into a dwelling-house; and
  - (iii) It creates enforcement issues for licensees who carry on part or all of their consulting activities in foreign jurisdictions and raises the risk that this section will not be enforced fairly as between licensees who practice in Canada versus those practicing abroad.
- The amendment of s. 81(2): This amendment drastically broadens the subject matter of the by-laws that the College may make with the authorization of the Governor in Council. Specifically, the College may be granted authority to make by-laws with respect to the subject matter of s. 81(1)(x), which permits "prescribing anything that, by this Act, is to be or

may be prescribed, that is excluded in the current version.” Pursuant to the proposed s. 81(2), the College’s by-laws are to be interpreted as regulations. While we understand this may be good for administrative efficiency, it almost places the College in the place of the Governor in Council. This approach risks reducing the layers of oversight over regulation-making, which may lead to by-laws prone to errors or other deficiencies.

## Recommendations

Based on the factors in the Background section, we recommend:

1. Remove the proposed s. 4(a.1):
  - This will not only avoid putting the College in a position of conflict of interest but also further the College’s mandates of protecting the public interest.
2. The proposed s. 73.1:
  - Add a requirement to s. 73.1(2)(a)(i) that an order authorizing entry into a place that is a dwelling-house may only be made where the authority in ss. 51(2) and 51(3) (pursuant to which an investigator may enter a dwelling-house without the occupant’s consent further to a warrant) is not possible, is not likely to be effective or has been ineffective.
3. The amendment of s. 81(2):
  - Examine the scope of by-law making power granted to the College to avoid it being overly broad.

## Conclusion

CAPIC understands and supports the inherent goal of protecting the public with respect to immigration and citizenship practice and stresses its concern for what is at stake if the amendments are moved to the next step without thorough examination. These concerns are expressed on behalf of CAPIC’s membership who may be negatively impacted by the amendments if they are enacted without revisions. The negative impact on consultants is not in the best interest of public protection but goes to the contrary. Therefore, CAPIC asks the Standing Senate Committee on Social Affairs, Science and Technology to take the aforesaid recommendations into consideration.

CAPIC is always ready to assist with any action that will enhance the ethical and competent practice of immigration and citizenship consultants and is willing to work with the Committee to address the issues we raised.



## About CAPIC

**The Canadian Association of Professional Immigration Consultants (CAPIC)** is the professional organization representing the interests of about 5,000 Canadian immigration and citizenship consultants. It serves its members on the four guiding principles: Education, Information, Lobbying, and Recognition.

CAPIC is the sole association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants. We are a major immigration stakeholder and consult with federal and provincial governments on legislation, policy, and program improvements and changes.

We are committed to promoting the ethics and competence of our members and protecting the integrity of the RCIC profession and the Canadian immigration system.

## Our Mission

CAPIC leads, connects, protects, and develops the profession, serving the best interests of its members.

## Our Vision

By 2024, CAPIC will:

- Represent a large majority of Citizenship and Immigration Consultants.
- Achieve optimum performance with sound governance principles centered on digital leadership.
- Lead as the point of reference in virtual and in-person professional development.
- Set the gold standard in immigration education.
- Remain the omnipresent SOLE voice of consultants in the Canadian immigration Domain.

## Contact Us:

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