



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

CAPIC Recommendations for the 2022 Interpretation Guide to the Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees

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About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of Canadian immigration and citizenship consultants, with 4500 members. It regulates Canadian Immigration Consultants (RCICs) on the four guiding principles of: 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 and protecting the competence of members and the integrity of the profession and the 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 sole voice of in the Canadian immigration system.

Our Values

Respect

We value all individuals and treat them with courtesy.

Professionalism

We are effective and efficient in our work, making proper use of the diverse skill sets of members and employees to provide quality results.

Integrity

We conduct ourselves ethically in all our actions and decisions.

We are passionate and determined in our work, and we encourage positive thinking and creative problem-solving skills.

Transparency and Accountability

We provide our members with CAPIC guidelines, policies, pertinent industry information, quality educational services, and networking opportunities.

Member Value Creation

We assist members in becoming capable professionals by providing appropriate services and education, networking opportunities, and mentorship skills.

CA PIC Recommendations for the Code of Professional Conduct for the College of Immigration and Citizenship Consultants Licensees

Definition of Client 1(1)

1(1) Definitions: Client

means a person or entity that: (a) Has entered into a consultation agreement or service agreement with a licensee; (b) Consults with a licensee who provides or agrees to provide Immigration or citizenship consulting services to them; or (c) Having consulted with a licensee, reasonably concludes that the licensee has agreed to provide immigration or citizenship consulting services to them. (client)

The definition of client from the Law Society of Ontario¹ enhances interpretation of the term client, as does the definition of Client Service and Communication².

A "client" means an individual who or organization that (a) consults the licensee and on whose behalf the licensee renders or agrees to render legal services, or (b) having consulted the licensee, reasonably concludes that the licensee has agreed to render legal services on their behalf. "Client" includes a client of the firm of which the licensee is a partner or associate, whether the licensee handles the client's work.

CA PIC's recommendation in its addendum is that the definition of client be interpreted in the same way as the definition of client pursuant to the relevant Commentary in the LSO Rules stating that a client "does not include a near-client, such as an affiliated entity, director, shareholder, employee or gaily member,

¹ "Glossary of Defined Terms". *Law Society of Ontario*, Updated January 1, 2022, [Glossary of Defined Terms - Lawyer | Law Society of Ontario \(lso.ca\)](#)

² "Client Service and Communication". *Law Society of Ontario*, Updated January 1, 2022, [Client Service and Communication - Lawyer | Law Society of Ontario \(lso.ca\)](#)

unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.”

CAPIC members have expressed concern that the definition of client under the newly adopted Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees (the “Code”) is broad and ambiguous. Therefore, in its forthcoming interpretation guide, the College ought to issue guidelines to assist licensees and members of the public in determining who qualifies as a client under this definition.

While the relationship of client can be either explicit or implicit, the licensee is bound by a promise to meet expectations.

First, the interpretation guide ought to acknowledge that the definition of “client” is broad and that the Code is applied in all client interactions. It should also clarify that subsections 1(1)(a), 1(1)(b) and 1(1)(c) are not conjunctive, such that a person who satisfies any one of these subsections qualifies as a client.

Second, the interpretation guide should clarify that no formality is required for an individual to be deemed a client under the Code. While subsection 1(1)(a) provides that a person who has entered into a consultation agreement or service agreement with a licensee is a client, neither agreement is necessary for a person to qualify as a client under subsections 1(1)(b) and 1(1)(c).

Third, the interpretation guide should clarify that subsection 1(1)(c) holds an objective element. That is, to be deemed a client, it is not enough for a person to subjectively conclude that a licensee has agreed to provide immigration or citizenship consulting services to them following a consultation. Instead, there must be objective evidence to demonstrate that the person had a reasonable expectation that the licensee agreed to provide services.

Finally, the interpretation guide ought to clarify that, unlike in the Law Society of Ontario’s Rules of Professional Conduct, the definition of client does not automatically include a client of the licensee’s firm or shared office where the licensee does not handle the client’s work. A person must meet any one of criteria in subsections in the definition of client 1(1)(a), 1(1)(b) or 1(1)(c).

Inducement (13)

13. Inducement

(1) A licensee must not

(a) Offer an inducement to any organization or person for recommending the licensee to a client or referring a client to the licensee; or

(b) Solicit or accept an inducement from any organization or person for recommending the organization or person to a client or referring a client to the organization or person.

Note: Accepting and inducement, often equated with a bribe, is prohibited. This prohibition is to help ensure that referrals are made in the best interest of the client (and not for financial gain).

Consultants are allowed to offer and accept gifts of token value.

Example: a gift basket to celebrate a client's successful acceptance as a new Canadian Citizen is allowed whereas tickets to a hockey game for the purpose of inducing a client to choose your services are both illegal and prohibited.

Exceptions:

- a) Inducements are permitted to an AGENT to solicit clients on the licensee's behalf if that agent is registered with the College. Example: Providing registered agents with compensation for providing marketing services.
- b) Licensees are permitted to accept fees from an employer for recruiting the client to work for the employer (under s. 17) and from an educational institution for recruiting the client to study at that institution (under s. 18).

Non-application

(2) Paragraph (1)(a) does not apply in respect of an inducement offered to an agent who solicits clients for a licensee if the licensee registers the agent's name with the College in advance.

Fee

(3) A fee referred to in paragraph 17(3)(d) or 18(3)(d) is not an inducement for the purposes of paragraph (1)(b)).

New provisions narrow the scope of the anti-inducement provision. Referral fees for employment recruitment and student recruitment services are thus expressly excluded from this provision.

CAPIC recommends defining Referral, Referral Fee, and Referral Agreement.

There is significant confusion around the anti-inducement provision in the new Code. To address this confusion, CAPIC submits that the College's interpretation guide writes a definition of "inducement" in plain language, explain the purpose or spirit of the prohibition, and illustrate what may or may not be considered an inducement.

The interpretation guide should clarify that the Code's definition of an inducement can include referral fees or monetary or non-monetary gifts, favours, bribes, benefits, bonuses, commissions and the like: granted directly or indirectly. These must not be offered or accepted in exchange for a licensee or client referral, except in certain circumstances.

The anti-inducement provision intends to ensure that referrals are made in the client or potential client's best interest rather than for financial gain and that the cost of licensee fees remain transparent. Clients and potential clients should be able to trust that a licensee's fees are charged only for the immigration and consulting services for which the licensee was retained and not inflated by hidden referral fees.

CAPIC members have expressed that giving and accepting small gifts may be a part of their practice, for example, a token gift is sent to past clients or other partners who help them grow their businesses.

The interpretation guide should clarify that the anti-inducement provision does not capture all activities which serve to compensate a party in exchange for business development activities and that the College will consider the relevant circumstances before making such a determination. For instance, general marketing activities are still acceptable. Licensees are permitted to pay marketing agencies for their services, if licensees do not offer a per-client basis compensation or pay for a target number of new clients. The interpretation guide ought to note that small gestures or tokens of nominal value (such as 'Thank You' or Holiday cards or small gifts) granted to clients for continued business or "word-of-mouth" recommendations are, on their own, unlikely to contravene

subsection 13(1). However, gifts of more substantial value are likely to be offside, and monetary payments are prohibited. The interpretation guide should also note that licensees must not engage in activities that create the expectation among other licensees, former clients, business partners or other parties that the person making the referral on the licensee's behalf will be compensated.

The inducement provision contains an exception for registered agents who solicit clients for licensees if these agents are registered with the College in advance. To this end, the interpretation guide ought to clarify whether the ICCRC Agent Regulation remains in effect. If not, CAPIC submits that the College should permit licensees to continue using existing Agent Agreement templates in alignment with the requirements of the Agent Regulation. Amendments to such agreements should not require approval from the College as is currently required under that regulation. The interpretation guide, or any revised or new agent regulation, should examine limits on who may qualify as an "agent". It should also clarify whether a person acting as an agent to solicit clients is viewed to be "assisting in the provision of immigration or citizenship consulting services", such that the licensee's obligations of supervision are accepted under subsection 38(2) of the Code in respect to agents. CAPIC submits that licensees should provide agents with a copy of the new Code and explain that agents are not authorized to provide immigration and citizenship consulting services; however, when working with agents operating in different countries whose activities they cannot directly oversee, licensees should only be expected to engage in minimal oversight to ensure that other agents comply with the Code.

15. Conflicts of Interest

Note: Licensees are now required to disclose their affiliations and agreements with related organizations or persons.

When addressing conflicts of interest that may arise in practice, licensees are expected to apply ethical actions, an ethical mentality, and ethical application of formal procedure.

16. Unauthorized Behaviours

Provisions to 16(2) permit clients to seek a second opinion from an independent advisor other than a lawyer who may be more accessible to the client than a lawyer.

The definition of student recruitment services and employment recruitment services (Section 18)

18. Definition of student recruitment services

For the purposes of this section, **student recruitment services** mean any of the following services:

- (a) seeking or obtaining enrollment for a client at an institution that provides education or training to international students;
- (b) assisting or advising any person with respect to seeking or obtaining enrollment for a client at an institution that provides education or training to international students;
- (c) assisting or advising a representative of an institution that provides education or training to international students or any person with respect to admitting a client to such an institution; or
- (d) referring a client to another person who offers the services referred to in any of paragraphs (a), (b) or (c).

Provisions to 18(1) reflect the reality that some licensees collaborate with recruiters to recruit foreign national for purposes other than employment, including the placement of clients in educational institutions.

NEW provision introduced on *student employment services*

Conflict of interest – student recruitment services

(2) A licensee is in a conflict of interest if they provide both immigration or citizenship consulting services and student recruitment services to a client who is a *foreign national*, as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*, unless the licensee is providing those services in their capacity as a salaried employee of an institution that provides education or training to international students.

Conditions

(3) However, a licensee may provide both immigration or citizenship consulting services and student recruitment services to a client who is a foreign national if the licensee

(a) before providing those services, advises the client that they are not obligated to receive both services from the same individual and obtains the client's free and informed consent in writing to proceed;

(b) ensures that the service agreement clearly differentiates between the immigration or citizenship consulting services and the student recruitment services that will be provided to the client;

(c) does not directly or indirectly charge a fee or disbursement to the client for any student recruitment services;

(d) discloses to the client the fees that the licensee is receiving from an institution that provides education or training to international students for recruiting the client to study at that institution;

(e) complies with all applicable legislation governing the provision of student recruitment services; and

(f) demonstrates honesty and candour towards the client and commitment to the client's cause, including by providing the client with accurate information regarding

(i) the institution they will be enrolled in, which includes providing a copy of their enrollment agreement, if any,

(ii) their program of study,

(iii) the tuition fees and the institution's refund policy, and

(iv) the services, support and benefits that the institution will be providing.

Definition of employment recruitment services

For the purposes of this section, **employment recruitment services** means any of the following services:

- (a) seeking or obtaining employment for a client.
- (b) assisting or advising any person with respect to seeking or obtaining employment for a client.
- (c) assisting or advising an employer or another person with respect to hiring a client; or
- (d) referring a client to another person who offers the services referred to in any of paragraphs (a), (b) or (c).

Conflict of interest – employment recruitment services

(2) A licensee is in a conflict of interest if they provide both immigration or citizenship consulting services and employment recruitment services to a client who is a *foreign national*, as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*.

Conditions

- (3) However, a licensee may provide both immigration or citizenship consulting services and employment recruitment services to a client who is a foreign national if the licensee
- (a) before providing those services, advises the client that they are not obligated to receive both services from the same individual and obtains the client's free and informed consent in writing to proceed;
 - (b) ensures that the service agreement clearly differentiates between the immigration or citizenship consulting services and the employment recruitment services that will be provided to the client;
 - (c) does not directly or indirectly charge a fee or disbursement to the client for any employment recruitment services.
 - (d) discloses to the client the fees that the licensee is receiving from an employer for recruiting the client to work for the employer.
 - (e) complies with all applicable legislation governing the provision of employment recruitment services; and
 - (f) demonstrates honesty and candour towards the client and commitment to the client's cause, including by providing the client, before they begin working in Canada, with a copy of their

employment contract and accurate information regarding the work that they will be doing and their wages, benefits and working conditions.

In alignment with international principles of fair recruitment and to ensure that recruitment fees are charged solely to the employer, licensees **cannot** charge clients fees for recruitment services. Licensees are permitted to accept fees from an employer or educational institution; however, any such fees received must be disclosed.

Both subsections 17(3)(e) and 18(3)(e) state that a licensee providing both immigration and citizenship consultation services and recruitment services must comply with all applicable legislation, including provincial legislation, governing the provision of employment and student recruitment services. There has been some concern among CAPIC members of potential discord between the Code and applicable provincial legislation; therefore, it would be of great assistance to licensees if the College's interpretation guide could expressly set out the provincial legislation that licensees are subject to and indicate that there is currently no perceived conflict between the Code and such legislation.

For instance, in Ontario, the Employment Protection for Foreign Nationals Act, 2009, S.O. 2009, c. 32 (EPFNA) applies to "[e]very person who acts as a recruiter in connection with the employment of a foreign national in Ontario pursuant to an immigration or foreign temporary employee program" (s. 3)). Under the EPFNA, no person who acts as a recruiter in connection with the employment of a foreign national is permitted to charge the foreign national a fee, directly or indirectly, for any service, good or benefit provided to them (s. 7(1)). Subsection 17(3)(c) of the Code aligns with this provision in the EPFNA by prohibiting licensees from charging consulting clients' fees or disbursement for recruitment services. The fact that any recruitment fees charged to an employer must be disclosed to clients aligns with the record-keeping requirements under s. 15 of EPFNA, which requires recruiters to maintain records of, among other things, the amount of any monies paid to the recruiter by an employer of the foreign national.

The definition of **employment recruitment services** and **student recruitment services** includes assisting or advising any person with respect to seeking or obtaining employment for a client (s. 17(1)(b)) and assisting or advising any person with respect to seeking or obtaining enrollment for a client at an institution that provides education or training to international students (s. 18(1)(b)). CAPIC submits that the College's interpretation guide sets out examples of what activities employment recruitment services and student recruitment services entail and that they can include orientation sessions, assistance, or instruction with respect to resume drafting, personal statements, or interview preparation,

and other classes, consulting, and workshops. If a licensee provides any such services to their consulting clients to assist them in employment or student recruitment, they must be provided free of charge.

Finally, licensees are prohibited from “directly” or “indirectly” charging recruitment-related fees and disbursements to their consulting clients (s. 17(3)(c); s. 18(3)(c)). The interpretation guide should clarify these provisions by offering examples of indirect fees and disbursements. This could elucidate situations where the licensee wishes to charge a fee for services related to obtaining a work permit for a foreign national client but asks the future employer of the foreign national to collect recruitment fees on its behalf through payroll deductions. Charging a recruitment fee would be in contravention of the Code, as well as s. 7(1) of the EPFNA. Section 23: Initial Consultation

Initial Consultation & Service Agreements (Section 23 & 24)

23. (1) Initial Consultation

Before a licensee has an initial consultation with a potential client with respect to the provision of immigration or citizenship consulting services, the licensee must enter into a written consultation agreement with that potential client.

Content of consultation agreement

(2) The consultation agreement must include the following information:

- (a) the licensee’s name, registration number, address, telephone number and email address;
- (b) the potential client’s name and contact information, including their address, telephone number and email address, if any;
- (c) the fee for the consultation or, if the consultation is provided *pro bono*, a statement to that effect;
- (d) a brief description of the College’s role as the licensee’s regulator; and
- (e) a description of the purpose and scope of the consultation.

Copy of agreement

(3) The licensee must keep a copy of the signed consultation agreement for their records and provide a copy to the client.

Consultation agreements may be brief but must include basic information set out at section 23(2) in order to maintain a clear record of the consultation and its purpose/ scope.

Prior to entering into a service agreement, a licensee must, among other things, confirm the client's contact information. This helps ensure licensees are doing their due diligence and validating information with their client (s. 24(2)).

A client must be provided with a copy of the signed service agreement (s. 24(4)).

Any amendments to the agreement require the client's agreement must be in writing (s. 24(5)). This also applies to increases in the estimated or fixed fees.

CAPIC members have raised questions about the nature of consultation agreements, given their existing practice for initial meetings, first consultation and screening with potential clients. The College's interpretation guide ought to clarify that consultation agreements need not be lengthy or overly formal. For instance, the required information may be gathered via email or online, including secured, fillable forms, provided that the client is able to access a copy of the agreement after it is completed. The College ought to assemble a template or generic form that illustrates the extent of the information required and that offers a draft of a brief description of the College's role as regulator. The consultation agreement template should also include a reminder to the client that a copy of the completed consultation agreement must be provided.

Finally, the guidelines should clarify that a consultation agreement is required regardless of whether a fee is charged for the initial consultation. This is different from the ICCRC Retainer Agreement Regulation, which only required a written 'Initial Consultation Agreement' at the time that the client paid a fee for the consultation in advance.

24. Service Agreement

(1) A licensee must enter into a written service agreement with a client before any immigration or citizenship consulting services are provided or, if

there was an initial consultation, before any additional immigration or citizenship consulting services are provided.

Preconditions

(2) Before entering into a service agreement with a client, a licensee must

(a) confirm the following information in respect of the client, seeking corroboration of the information if possible:

(i) their full name,

(ii) their home address and their personal telephone number and email address, if any, and

(iii) their business address, telephone number and email address, if applicable;

(b) provide the client with a draft of the service agreement; and

(c) verify whether the client has entered into a service agreement with another individual who is authorized to provide representation or advice under section 91 of the *Immigration and Refugee Protection Act* or section 21.1 of the *Citizenship Act* and, if so,

(i) confirm that the service agreement with the other individual has been completed or has been terminated in writing before completion and, if applicable, confirm the outcome of the completed service agreement, or

(ii) obtain clear instructions from the client on the scope of the service agreement if the client wishes to engage the services of both the licensee and the other individual.

Note: a consultation agreement is considered a form of service agreement.

Content of service agreement

(3) The service agreement must include the following information:

- (a) the licensee's name, registration number, address, telephone number and email address;
- (b) the information referred to in subparagraphs (2)(a)(i) to (iii);
- (c) a summary of any preliminary advice given to the client by the licensee;
- (d) a statement that the licensee endeavours to provide quality immigration or citizenship consulting services and to adequately supervise any person who assists in the provision of those services;
- (e) the names of the people who are likely to assist the licensee in the provision of immigration or citizenship consulting services;
- (f) the client's instructions;
- (g) an itemized list of the services to be provided, tailored to the needs of the client, that describes the nature of the services and their scope;
- (h) estimated time frames for the delivery of the services;
- (i) an estimate of fees, including the hourly rate and the anticipated number of hours, or an agreed fixed fee or, if the services are provided *pro bono*, a statement to that effect;
- (j) an estimate of expected disbursements;
- (k) any goods and services tax, harmonized sales tax or other tax or levy to be charged to the client;
- (l) the terms of payment for fees and disbursements, including any interest payable on unpaid amounts;
- (m) any advance payments to be made by the client and the licensee's refund policy;
- (n) an explanation of any additional costs that the client may be required to pay;
- (o) if applicable, a description of any conflict of interest or potential conflict of interest relating to the client;

- (p) a statement that any original documents provided by the client to the licensee will be returned to the client as soon as the purpose for which the licensee took possession of the documents has been achieved;
- (q) a statement that the licensee has an obligation of confidentiality under this Code and a description of the manner in which the licensee will maintain the confidentiality of the client's information and documents;
- (r) the licensee's complaint-handling procedure;
- (s) the official language of Canada in which the services will be provided;
- (t) a statement that the licensee will provide timely information related to the status of the client's case;
- (u) a statement that the licensee will obtain assistance, when necessary, including by retaining the services of an interpreter or translator;
- (v) a description of the College's role as the licensee's regulator and an explanation of the College's complaints process;
- (w) an explanation that the College may require the production of documents in accordance with the Act and any regulations or by-laws made under the Act;
- (x) a statement that the licensee has provided a copy of this Code to the client;
- (y) an explanation of what will happen to the client's file if the licensee becomes incapacitated or is otherwise unable to continue providing services under the agreement; and
- (z) any other terms agreed to.

Copy of agreement

- (4) The licensee must keep a copy of the signed service agreement for their records and provide a copy to the client.

Amendments to agreement

(5) Any amendments to the service agreement must be agreed to by the client and the licensee in writing.

A template for Service Agreements is expected of a RCIC.

For many licensees, there is significant confusion around the new requirements for service agreements under section 24 of the Code. Licensees wonder whether existing service agreements between licensees and their clients must be brought into compliance with the new requirements. CAPIC submits that section 24 not be interpreted to operate retroactively. If the College concludes otherwise, licensees should be permitted to update their existing service agreements by adding any missing information via an addendum with a significant grace period in which to do so.

The College should also clarify whether any part of the ICCRC Retainer Agreement Regulation continues to be in effect and whether it intends to release a template service agreement or generic form that can be adapted for use by licensees.

The interpretation guide should clarify that estimates of wait time are permitted under subsection 24(3)(h), requiring licensees to provide an estimated time frame for the delivery of services. This is because services requiring approvals and processing by the Government of Canada can be subject to long, uncertain wait times, especially in the wake of the COVID-19 pandemic. For those services involving unknown wait times, licensees should not be required to provide any guaranteed date by which the service will be completed.

The interpretation guide should clarify that under s. 24(3)(x) requiring the licensee to deliver a copy of the Code to their client, an electronic PDF copy of the Code or a direct link to the online version of the Code in either English or French are both sufficient. The Code should not be interpreted as requiring the licensee to develop or pay for translated copies of the Code. CAPIC submits that the College ought to fund the translation of the Code into several high priority languages native to a licensee's client, as the Code is a valuable tool for transparency intended for the benefit of the public and its translation should not fall on licensees alone.

Finally, the interpretation guide should clarify what fee structures are permitted. Under the Retainer Agreement Regulation, licensees were permitted to charge fees by the hour, by the day, or according to a flat fee method of billing with payment by milestones. However, they were expressly prohibited from engaging in contingency billing. The guidelines ought to clarify whether contingency billing is still prohibited. CAPIC submits that this form of billing should be an available choice: just as lawyers and paralegals in Ontario are permitted to enter into contingency fee agreements with their clients. Allowing contingency fee

agreements under the new code would encourage efficient service delivery, while licensees' obligations would disincentivize unethical behaviour and cutting corners among licensees.

Conclusion

It is evident an interpretation guide is required to properly understand and clarify the College Code. Furthermore, plain language is required to ensure licensees have the framework and parameters to carry out their day-to-day representation in an effective and competent manner. The noted areas of the Code outline sections where there must be unambiguous and straightforward language.

CAPIC supports the transition to the new College Code while emphasizing the need for clear in-depth interpretation so that licensees can conduct themselves with the framework of transparent and comprehensive guidelines. Consumer confidence must be maintained and the public protected.

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