



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

CAPIC's Input for Regulations Amending the Citizenship Regulations (Administrative Penalties and Consequences)

February 6, 2024

Table of Contents

| | |
|-----------------------------------|---|
| Introduction..... | 3 |
| Analysis and Recommendations..... | 3 |
| Conclusion | 7 |
| About CAPIC | 8 |
| Contact Us..... | 8 |

CAPIC's Input for Regulations Amending the Citizenship Regulations (Administrative Penalties and Consequences)

The submission contains CAPIC's input for the amendment to the Citizenship Regulations (Administrative Penalties and Consequences, APC) published in Canada Gazette, Part I, Volume 158, Number 51 (hereinafter referred to as the Amendment or [the APC regime](#)). It is based on CAPIC's research and our members' feedback.

CAPIC supports cracking down on unauthorized practitioners (UAPs) and holding accountable bad actors among authorized representatives (ARs) to safeguard the integrity of the Canadian immigration system. However, CAPIC has observed that the APC regime treats three types of violations without distinction: UAP practice, AR miscounselling, and misrepresentation. Such an approach may lead to confusion and could ultimately undermine the effectiveness of the Amendment.

Introduction

As stated in its Regulatory Impact Analysis Statement, the Amendment is enabled by ss. [27](#)(1)(K.6) to (K.9) and [27](#)(3) of the *Citizenship Act*, RSC 1985, c. C-27 (Citizenship Act). It aims to provide Immigration, Refugees and Citizenship Canada (IRCC) a tool to sanction individuals who commit unauthorized citizenship practices, misrepresentation in counselling, and failure to comply with inspections. The APC regime applies to both ARs and UAPs.

Analysis and Recommendations

1. Analysis

(1) The APC regime should be aligned with the Citizenship Act

The *Citizenship Regulations* are enabled by the Citizenship Act, the same as its amendments. The relevant provisions of the Amendment seem to be inconsistent with applicable Citizenship Act provisions.

CAPIC submits that (i) the APC may be a means to encourage ARs to comply with the Citizenship Act and *Citizenship Regulations*; for UAPs, it should be a measure to deter their illegal activities of providing paid advice, as unauthorized practice is an offence instead of a matter of non-compliance of the *Citizenship Regulations*; and (ii) the APC regime should serve as an additional measure to criminal

penalties instead of a substitute. Otherwise, the APC regime may not be an enhanced tool for Citizenship Act enforcement.

a. Citizenship Act provisions

The Citizenship Act prescribes unauthorized practice, miscounselling, and misrepresentation as three distinct offences. S. [21.1\(1\)](#) prohibits unauthorized practice and [s. 29.1](#) stipulates such practice as an offence subject to criminal penalties.

S. 21.1(2) authorizes ARs to provide citizenship services and advice for consideration. ARs are regulated by their respective regulators. Counselling misrepresentation by ARs is professional misconduct that is to be investigated by their regulators.

All representatives, including ARs, are subject to counselling misrepresentation under [s. 29.2\(1\)](#), which is an offence. All parties involved in a citizenship proceeding, including applicants, are subject to misrepresentation prescribed in s. 29.2(2). S.29.2(3) stipulates criminal penalties for counselling misrepresentation and misrepresentation.

In summary, the Citizenship Act is clear that (i) unauthorized practice is to be punished, (ii) neither miscounselling misrepresentation offence nor misrepresentation offence requires consideration as an essential element, and (iii) both representatives and applicants are subject to misrepresentation penalties.

b. Provisions of the Amendments

S. 34 of the Amendment specifies that the purpose of the APC regime is to “encourage compliance with the provisions of the Act and these Regulations and not to punish.” However, for UAPs, administrative measures should be punitive.

S.36 of the Amendment designates UAP practice as a violation; its wording is identical to s. 21.1(1) of the Citizenship Act except for identifying persons and individuals who are authorized to practice. S.37 designates misrepresentation as a violation; the wording is similar to counselling misrepresentation and misrepresentation by ss. 29.2(1) and (2)(a) and (b) of the Citizenship Act.

While ss. 27(1)(K.6) to (K.9) and 27(3) authorizes making regulations to establish the APC regime and designate violations, designating violations should add one more tool for the Citizenship Act enforcement. With the similarities between offences stipulated by the Citizenship Act and violations proposed by the Amendment, it is unclear if violations will be dealt with by both the APC regime and

criminal penalties after the implementation of the Amendment. CAPIC believes that it is necessary to have administrative and criminal penalties work in tandem.

(2) The potential unintended consequences of treating ARs and UAPs without distinction

The violations designated in the Amendment include unauthorized practice in s. 36, misrepresentation in s. 37, and failure to provide documents as required by an officer in s. 38(3). The provisions that follow prescribe the APC regime enforcement procedures and outcomes.

The structure and descriptions of the Amendment place unauthorized practice, and misconduct by ARs as the same while the nature of the two are categorically distinct.

While the authorities for the APC regime in the Citizenship Act do not distinguish ARs from UAPs, s. 27(1)(k.5), a paragraph right before the first paragraph for the APC regime, specifically deals with ARs' professional or ethical conduct. It shows that the Citizenship Act distinguishes ARs from UAPs. The approach adopted by the Amendment, treating ARs and UAPs without distinction, may bring unintended consequences.

a. More confusion and false impression

Citizenship applicants may not know that paid citizenship advice and services are an authorized practice. The common UAP practice in the main source countries like India and China and even in Canada proves that this is an unfortunate situation for many applicants. Only a limited number of applicants have the ability and knowledge to identify ARs from UAPs.

Some media outlets often mix immigration consultants with UAPs; CAPIC routinely reaches out to media outlets to correct this kind of inaccuracy in news reports. The lack of understanding by the media in distinguishing between ARs and UAPs makes it harder for applicants to distinguish immigration consultants from UAPs.

While the difference between ARs and UAPs is already difficult for many applicants, treating ARs and UAPs the same way in the APC regime, may cause more confusion.

It is CAPIC's opinion that any ARs and UAPs should be clearly distinguished in the APC and that penalties for UAPs should be higher, given that s. 27(1)(k.5) gives the power of making regulations for referring ARs to their governing bodies and ARs are also held to account by their regulatory body.

(b) Shifting the focus

While ARs are regulated by their respective regulators and bound by their professional codes and regulations, UAPs, currently, are only subject to criminal penalties, which are more difficult to pursue. To achieve its objectives, the APC regime has to be an effective tool to sanction and penalize UAPs, rather than simply becoming an extra layer of punitive punishment for ARs.

If the APC regime is merely a tool mainly to deal with AR violators, it leaves the door open for UAPs to continue their fraudulent activities.

(3) APC enforcement in tackling the UAP practice

Inspection and APCs can be effective tools for in-Canada enforcement. Likely, it could be more effective for ARs instead of UAPs, as that would trigger disciplinary investigations.

To enhance the effectiveness of measures against UAPs, additional actions should be implemented alongside administrative penalties and publicly disclosing violators' information on the IRCC website. One such measure should include the mandatory referral of UAPs to the CBSA and the Royal Canadian Mounted Police (RCMP) for further enforcement.

The mechanism of mandatory referral can hold UAPs in Canada through both administrative means and criminal penalties. Criminal penalties should work for UAPs outside Canada better than administrative means. It may deter their practice, as either they would be denied entry to Canada on the grounds of criminality, or they would face immediate criminal charges if they are allowed entry to Canada.

(4) Small business impact

The APC regime is similar to the APC regime of the *Immigration and Refugee Protection Regulations* (IRPR). The small business lens section of the Regulatory Impact Analysis Statement of the IRPR APC regime states that 99% of licensed practitioners are estimated to be small businesses. The Analysis Statement says that most of the penalties would impact small businesses but concludes that penalties are not considered an administrative or compliance burden according to the *Policy on Limiting Regulatory Burden on Business*.

The above analysis has overlooked the potential cost to ARs related to the APC process that leads to no penalties. In other words, the time and costs of going through the process for no wrongdoings on ARs' end are not taken into

consideration. Also, ARs are subject to confidentiality, and thus inspections may pose an issue.

ARs are often Canadian small business owners. Administrative processes like inspections can be burdensome. A balance of protecting applicants and Canadian small businesses needs to be taken into consideration.

For example, s. 38(1) stipulates that an officer may initiate any inspection when he or she has reasonable grounds to suspect a violation is committed by a person. It is not an issue to go after UAP practice. It could be an issue when pursuing ARs if such an inspection is not based on a suspicion or finding of misrepresentation on the applicant's end.

2. Recommendations

Based on the above analysis, CAPIC recommends the following:

- (1) Add a mandatory referral mechanism to make the APC regime an addition to criminal penalties prescribed by the Citizenship Act
 - a. Refer UAPs to CBSA/RCMP.
- (2) Separate APC for ARs and UAPs
 - a. Make regulations according to s. 27(1)(k.5) for AR compliance.
 - b. Inspection of ARs concerning misrepresentation should be based on the suspicion or finding of misrepresentation of applicants.
 - c. Publish AR violators and UAPs in separate lists.
- (3) Conduct a thorough small business impact analysis

CAPIC also recommends the following operational measures that can be easily implemented to tackle the UAP issue and deter misrepresentation by applicants:

- (1) Separate representative forms for ARs and non-ARs.
- (2) Add a use-of-representative question to citizenship application forms.
- (3) Add a declaration section for applicants who answer no to the representative question.

Conclusion

ARs are an additional layer to safeguard the integrity of the Canadian immigration system despite the existence of a handful of bad actors. Thus, they should be separated from UAPs in the APC regime. UAPs should be the focal point for the APC regime. The APC regime should be a complementary tool not a substitute for criminal penalties prescribed by the Citizenship Act. It also needs to work in



tandem with operational policies and processes. Additionally, while victims of fraud or misconduct should not be penalized, applicants who are complicit in UAP practice and misrepresentation must also be responsible for their own doing.

About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is a non-profit professional organization representing the interests of Canadian Immigration Consultants. Our headquarters is located in Toronto (M5C 1C4) with staff from across Canada and members in Canada and overseas. The organization advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry. CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its nearly 5000 members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants. CAPIC is a major stakeholder consulting with federal and provincial governments and their respective departments on legislation, policy, and program improvements and changes.

All CAPIC submissions are publicly available on the CAPIC Advocacy web page to facilitate communication between CAPIC and our 4,400-strong membership and the general public.

Contact Us

www.capic.ca

Hui Zhang: Stakeholders@capic.ca