



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

CAPIC's Input for Regulations Amending the Immigration and Refugee Protection Regulations (Administrative Penalties and Consequences)

February 4, 2024

Table of Contents

| | |
|-----------------------------------|---|
| Introduction..... | 3 |
| Analysis and Recommendations..... | 3 |
| Conclusion | 8 |
| About CAPIC | 8 |
| Contact Us..... | 9 |

CAPIC's Input for Regulations Amending the Immigration and Refugee Protection Regulations (Administrative Penalties and Consequences)

The submission contains CAPIC's input for the amendment to the Immigration and Refugee Protection 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 fully supports cracking down on unauthorized practitioners (UAPs) and holding bad actors among authorized representatives (ARs) accountable 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 applicant misrepresentation. Treating these violations, especially UAP practice and AR miscounselling, without distinction may lead to confusion and could ultimately undermine the effectiveness of the Amendment.

Introduction

The Amendment is enabled by s. [91.1](#)(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA). It aims to provide Immigration, Refugees and Citizenship Canada (IRCC) a tool to sanction individuals who commit unauthorized immigration practices, misrepresentation in counselling, and failure to comply with inspection. The APC regime applies to both ARs and UAPs.

Analysis and Recommendations

1. Analysis

(1) The APC regime should be aligned with IRPA

IRPR is enabled by IRPA, the same as its amendments. The relevant provisions of the Amendment seem to be inconsistent with applicable IRPA provisions.

CAPIC submits that (i) the APC regime may be a means to encourage ARs to comply with IRPR; for UAPs, it should be a measure to deter their illegal activities of providing paid advice, as UAP practice is an offence instead of a matter of non-compliance of IRPR; and (ii) the APC regime should serve as an additional measure to criminal charges instead of a substitute. Otherwise, the APC regime can hardly be an enhanced tool for IRPA enforcement.

a. IRPA provisions

IRPA prescribes unauthorized practice, miscounselling, and misrepresentation as three distinct offences. S. [91\(1\)](#) prohibits unauthorized practice and s. [91\(9\)](#) stipulates such practice as an offence subject to criminal penalties.

S. 91(2) authorizes ARs to provide immigration 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. 126](#), which is an offence. The administrative consequences for applicants for misrepresentation are prescribed in s. [40](#). S.127 applies to both representatives and applicants and [S.128](#) stipulates criminal penalties for counselling misrepresentation and misrepresentation.

In summary, IRPA 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. 315.45 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 also be punitive.

S.315.47 of the Amendment designates UAP practice as a violation; its wording is identical to s. 91(1) of IRPA except for identifying persons and individuals who are authorized to practice. S.315.48 designates misrepresentation as a violation; the wording is a carbon copy of counselling misrepresentation by s. 126 of IRPA and misrepresentation by ss. 127 (a) and (b).

While s. 91.1(1) authorizes IRPR to establish the APC regime and designate violations, designating violations should add one more tool for IRPA enforcement. With the similarities between offences stipulated by IRPA 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. 315.47, misrepresentation in s. 315.48, and failure to provide documents as required by an officer in s. 315.49(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.

CAPIC agrees that bad actors¹ exist in every profession regardless of how respected a profession is. CAPIC understands that the Amendment may follow the rationale of amendment to s. 91.1 (2) of IRPA, which initially provided ARs, and other individuals and entities permitted to provide immigration services with a means to request a review for notice of violation and then amended to expand the right of review request to any violation suspects, including UAPs. However, such an approach adopted by the Amendment may bring unintended consequences.

(a) More confusion and false impression

Applicants and potential immigrants may not know that paid immigration advice and services are an authorized practice. The common UAP practice in the main source countries like India² and China³ and even in Canada⁴ proves that this is an unfortunate situation for many potential immigrants. Only a limited number of potential immigrants 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.⁵

¹ See example: Jessica Mach, “BC lawyer disbarred for second time after stealing client funds: LSBC tribunal,” Canadian Lawyer, posted Jan. 20, 2025, [online](#).

² The India education agency used fraudulent acceptance letter to get Indian students into Canadian designated learning institutions also had 976 other applications refused by IRCC. See CIMM, [Evidence](#), 42nd Parliament, 1st session, Meeting No.71, June 14, 2023, 1707 (Christiane Fox, IRCC Deputy Minister).

³ 中国报告大厅 [China Report], 《2024 年移民中介品牌排名汇总 移民中介品牌排行榜》[The 2024 rankings of the Chinese immigration agencies], www.chinabgao.com, accessed February 4, 2025, [online](#).

⁴ The College’s 2024 Annual Report indicates that nearly 2,246 UAP websites and social media pages were shut down in that reporting cycle. See The College, 2024 Annual Report, p. 21, [online](#).

⁵ CAPIC, Request to Clarify: Individual Under Investigation in Recent Article Is Not an Immigration Consultant as per the College Act,” November 27, 2024, [online](#).

The lack of understanding by the media in distinguishing between UAPs and ARs makes it harder for potential immigrants to distinguish them.

While the difference between ARs and UAPs is already difficult for many potential immigrants, treating ARs and UAPs the same way in the APC regime, most likely, 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 ARs should be 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 penalties can be effective tools for in-Canada enforcement. It may be more effective for ARs instead of UAPs, as that would trigger disciplinary investigations.

To make such measures more effective towards UAPs, it is better to have additional measures in addition to administrative penalties and publish the relevant information of the violators on the IRCC website. Mandatory Referral of UAPs to CBSA and Royal Canadian Mounted Police (RCMP) may be considered.

The mechanism of mandatory referral can tackle UAPs in Canada through both administrative means and criminal penalties. For UAPs outside Canada, this may deter their practice, as either they would be denied entry to Canada on the grounds of criminality, or would face immediate criminal charges if they are allowed entry to Canada.

(4) Small business impact

The Small business lens section of the Regulatory Impact Analysis Statement states that 99% of licensed practitioners are estimated to be small businesses. While it says that most of the penalties would impact small businesses, it

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.

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. 315.49 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 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. Otherwise, an odd scenario could emerge: Applicant is not suspected of or found misrepresentation under s. 40(1) of IRPA, but the AR has to go through inspections under ss. 315.48 and 315.40.

2. Recommendations

Based on the above analysis, CAPIC recommends the following:

- (1) Add mandatory referral mechanism to make the APC regime an addition to criminal penalties prescribed by IRPA
 - a. Refer AR violators to responsible regulators.
 - b. Refer UAPs to CBSA/RCMP.
- (2) Separate APC for ARs and UAPs
 - a. Inspection of ARs concerning misrepresentation should be based on the suspicion or finding of misrepresentation of applicants.
 - b. 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 all immigration application forms.
- (3) Add a declaration section for applicants who answer no to the representative question.

Conclusion

CAPIC firmly supports efforts to eliminate unauthorized practitioners (UAPs) and uphold the highest standards among authorized representatives (ARs) to protect the integrity of Canada's immigration system. However, the current APC regime lacks a clear distinction between UAP practice, AR violations, and applicant misrepresentation, which risks creating confusion and undermining its effectiveness.

To ensure a fair and effective enforcement framework, CAPIC strongly recommends that the APC regime serve as a complementary measure to criminal penalties, not a substitute. UAPs should remain the primary focus of enforcement, with harsher penalties and mandatory referral mechanisms to CBSA and RCMP. Meanwhile, ARs should be subject to regulatory oversight by their respective bodies, with enforcement measures that are proportionate and justified.

Additionally, CAPIC urges operational improvements, including the separation of representative forms, applicant declarations on representative use, and clearer procedural safeguards for ARs. These measures will enhance transparency, deter misrepresentation, and better protect both applicants and legitimate professionals.

CAPIC remains committed to working collaboratively with IRCC and other stakeholders to refine the APC framework, ensuring it effectively targets bad actors while safeguarding the integrity of immigration representation in Canada.

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