



Canadian Association of  
Professional Immigration Consultants

L'Association Canadienne des  
Conseillers Professionnels en Immigration

# CAPIC's Recommendations for Safeguarding the Integrity of the Canadian Immigration System

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## **CAPIC's Recommendations for Safeguarding the Integrity of the Canadian Immigration System**

The Canadian Association of Professional Immigration Consultants (CAPIC), as the voice of the immigration and citizenship consultant profession, aims to foster professionalism and integrity among its members, which number about 5,000 [Canadian immigration and citizenship consultants](#), also known as Regulated Canadian Immigration Consultants (RCICs). The strings of protests by some international students from India from late 2022 to mid-2023 generated wide media attention and triggered the Standing Committee on Citizenship and Immigration (CIMM) to probe into the issue of the administration of admission of international students. It brought the issue of immigration fraud, which jeopardizes the integrity of the Canadian immigration system back to the limelight. During his interview with CBC's *The House* on August 27, 2023, [Minister Miller](#) expressed his concerns about Canadians' confidence in the integrity of the immigration system where the admissions of international students are skyrocketing.

To fulfill the objectives set out in section 3 of the *Immigration and Refugee Protection Act*, SC. 2001, c. 27 (IRPA), safeguarding the integrity of the Canadian immigration system is at the core. To find effective measures to this effect, CAPIC has been conducting extensive research over the past few months. Enclosed please find CAPIC's recommended measures. The submission also incorporated input from CAPIC members, authorized representatives who work in the frontline of immigration practice and thus understand the weaknesses of the Canadian immigration system and the pitfalls immigration candidates may encounter.

### **Background**

#### **1. The factors that threaten the integrity of the Canadian immigration system**

##### **(1) Unauthorized practitioners**

During the interview with CBC's *The House*, Minister Miller mentioned several factors, including immigration fraud and unscrupulous persons that harm the integrity of the Canadian immigration system. Unscrupulous persons sell false hopes to immigration candidates including international students. Building their future on false hopes and promises, newcomers see their moving-to-Canada dream shattered after having spent so much time, effort, and financial resources. Their distress and desperation leave them vulnerable and appealing to fraudsters

who may offer them backdoor options. Such practices, regardless of their form, are no better than immigration fraud.

By closely examining immigration fraud and unscrupulous persons, the shadow of unauthorized practitioners (UAPs) can be seen. These persons, located in and outside Canada, despite being prohibited by subsection 91(1) of IRPA from practicing for any consideration, generate handsome profits and gains for themselves at the cost of their prey and the integrity of the Canadian immigration system. For example:

- The recent Indian student protesters' study permit applications were handled by a UAP. The records of Immigration, Refugees, and Citizenship Canada (IRCC) show, that this UAP also applied for study permits for other [976](#) Indian students that however were refused. Late this June, during the CIMM study of the exploitation of international students, this UAP [was seeking entry to Canada](#).
- In 2018, [566](#) newly landed PEI provincial nominees used the same motel or a residential address as their Canadian address and the PEI Government didn't know their true whereabouts even though they were supposed to reside in the PEI, a mandatory requirement set out in section 87(2)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR). The owner of the two properties, said publicly that "[Everybody knows' PNP immigrants were bypassing P.E.I.](#)" While the incident propelled the Province to close the flawed entrepreneur program, the case against the owner was [stayed](#) and no data shows whether the bypassers were held responsible.
- IRCC was taken to court by dozens of refused applicants on the grounds of procedural fairness using a common UAP [FlyAbroad](#). Their applications were granted.
- In 2014, Canadian [Sunny Wang's](#) case, the biggest immigration fraud committed by a UAP, involved more than 1000 permanent residents and foreign nationals who retained his "immigration service." Wang was sentenced to seven years of imprisonment. In June 2018, Sunny Wang was released on parole with more than \$900,000 fines unpaid and a line of his former "clients" facing proceedings of the IRB to decide their fate: at the mercy of the humanitarian and compassionate to stay or with a shattered Canadian dream to leave.
- From 2004 to 2010, until a decision issued by the Immigration and Refugee Board (IRB) that banned his representation before the IRB, [Hagos Beiene](#) had represented more than 400 individuals in the proceedings of the IRB, especially the Refugee Protection Division. He claimed he was an unpaid representative, but no evidence corroborated such a claim.

The list can go on and on. This May, during the Standing Senate Committee on Social Affairs, Science and Technology meeting studying Division 18, Part 4

of Bill C-47, several Committee members expressed their concerns over the prevalent practice of UAPs.

UAPs know how to abuse the Canadian immigration system. Worse, if the design of the program or application process bears glitches, these bad actors and their complicities who gained their admission to Canada by fraud or misrepresentation find a way to use the *Canadian Charter of Rights and Freedoms* or procedural fairness as their defense. As UAPs are always on the lookout for loopholes in the system, the most effective measure to safeguard the integrity of Canadian system is to close such loopholes.

## **(2) The lack of effective communication channels for authorized representatives**

Authorized representatives are authorized by IRPA. They are a force to maintain the integrity of Canadian immigration system and work with all responsible departments. However, authorized representatives have the same level of access and communication with IRCC as someone who is unauthorized or unrepresented. This weakens the function of the authorized representatives.

CAPIC understands the ongoing modernization initiative of the IRCC platform is necessary and it changes the way IRCC communicates with applicants and their representatives. The web form has become the major channel for communications. Delays in replies to web form inquiries and long processing times without access to processing officers or, at least, IRCC officers who can address case-specific issues in a meaningful manner, may cause tremendous distress to applicants. Some may seek a writ of *mandamus*, which being a court proceeding requires much more effort and time on both parties involved compared to effective communications. According to the data shared by Judge Gleason from the Federal Court of Appeal (FCA) in the 50<sup>th</sup> Anniversary celebration [immigration webinar](#), over the years, only 468 certified questions made their way to the FCA, a small percentage of immigration cases. When we conducted a search on the website of the FCA using “immigration and mandamus,” [74 results](#) showed up. Though the rough result may not scientifically reflect the number of *mandamus* cases before the FCA in precision, it still shows such cases could be disproportionately high given the fact that the chance for access to the FCA is so low.

Delays and long processing times in tandem with lack of effective communication channels not only trigger *mandamus* applications, but also increases the workload to immigration officers. Some applicants submit more than one online application to overcome long processing times or delays. In addition, this may put applicants in a more vulnerable position, making them an easy target for fraudsters. In Sunny Wang’s case, he took advantage of this issue

to assure his clients that he was working on their files with the connections he had.

### **(3) The circumvention of rules for international student recruitments**

One issue that IRCC already identified is that some DLIs have set up [satellite campuses](#) run by private colleges that are otherwise qualified as DLIs. This is a place where UAPs can easily pick up international students under the guise of education agencies. Once the students set foot on Canadian soil, they become the responsibility of the Canadian immigration.

### **(4) The anticipation of the interplay between the online applications and the maintenance of the integrity of the Canadian immigration system**

In October 2022, IRCC implemented [100 percent online applications](#) for most permanent resident programs. Though at that point, [CAPIC recommended](#) the delay of such an initiative on the basis of the unstable online system, online applications also make it harder to detect UAPs behind.

Furthermore, the status of Canadian citizenship and permanent resident is neither a requirement for admission to the Canadian law societies nor for licensees of the College of Immigration and Citizenship Consultants. This makes it easier for UAPs, especially outside Canada where immigration candidates may have less knowledge about Canadian immigration than that of the ones in Canada, to pretend their legitimacy.

This backdrop unintentionally provides a favorable climate to UAPs: To immigration candidates, they may pretend their legitimacy as authorized representatives by pointing out that foreign nationals are eligible to be legitimate representatives. It would be convincing to immigration candidates because the admission requirements are Canadian rules. To Canadian immigration authorities, UAPs don't disclose themselves as representatives but still act to the effect.

CAPIC understands that migrating to an online system is fundamental to a system that can operate smoothly and efficiently, and that the integrity of the system should not be compromised by 21<sup>st</sup> innovation. For example, the Canada Revenue Agency's online system that serves tens of millions of taxpayers works well. CAPIC supports the modernization of the Canadian immigration system. However, it is expected effective mechanisms are in step with the system modernization so that while administrative efficiency is improved, the measures for safeguarding the integrity of the Canadian immigration system are implemented as well.

## 2. Current measures to safeguard the integrity of the Canadian immigration system

Currently, there are both statutory and operational measures in place to safeguard the system. Below are the measures followed by an efficiency analysis based on research and the experiences of CAPIC members' practice.

### (1) Statutory measures

- a. **Penalties for unauthorized practice:** Subsection 91(9) of IRPA prescribes unauthorized practice as an offence that subject to a fine up to \$200,000, a sentence of imprisonment of up to 2 years, or both if being convicted on indictment; to a fine up to \$40,000, a sentence of imprisonment of up to 6 months, or both if being convicted summarily.
- b. **Penalties for counseling misrepresentation and misrepresentation:** Sections 126 and 127 of IRPA prescribe the prohibited counselling misrepresentation and misrepresentation. Contravening the provisions will result in committing an offence that, pursuant to section 128 of IRPA is subject to a fine up to \$100,000, a sentence of imprisonment of up to 5 years, or both if being convicted on indictment; to a fine up to \$50,000, a sentence of imprisonment of up to 2 years, or both if being convicted summarily.

The measures mentioned above relating to fraud prevention are non-exhaustive. To see the effectiveness of the measures are, we conducted two searches using "s. 91(1) of the *Immigration and Refugee Protection Act*" and "s. 128 of the *Immigration and Refugee Protection Act*" respectively and noted 11 court decisions for the former and three for the latter. However, when we searched "misrepresentation" and "Immigration and Refugee Protection Act," there were 4435 court decisions, including decisions made by the Immigration and Refugee Board (IRB); When searching "ghost consultants" (the accurate term is unauthorized practitioners (UAPs) and this inaccurate term here only for the purpose to obtain the past data as it was used by both courts and the IRB), 42 decisions were found. The data gives rise to a doubt that how actively statutory measures are pursued against the UAPs and misrepresentation offenders.

On that same note, sections 34 to 42 IRPA prescribe inadmissibility grounds, which is also a statutory safeguarding mechanism. Overstaying is one of the inadmissibility grounds, which contravenes paragraphs 20(1)(b) of IRPA and subsection 183(1)(a) of IRPR. Many foreign nationals who receive poor or fraudulent advice arrive in Canada with different expectations or under false promises. As a result, some overstay or seek other avenues in order to realize their dream of temporary or permanent residency. It is critical to ensure that potential immigration seekers have the right information and proper

representation, as they make their decisions. This may reduce overstays and other ill-conceived pathways and improve the integrity of the system. The estimation based on data shows that “[the stock of overstays between 2017 and 2022 was north of 750K](#)” and such a number is rather conservative. It shows statutory measures need both preventative measures, including a functioning and robust immigration system that is timely, and responsive, with a strong infrastructure to help mitigate such infractions, and law enforcement to realize.

## (2) Measures taken by IRCC

- a. **[Learn about representatives web pages](#)**: IRCC has this well-organized informative section on its website explaining the two types of representatives, a good initiative to afford the general public to obtain such necessary knowledge and information.
- b. **The Use of Representative Form [IMM5476]**: IRCC requires all applicants to include this form if they have a representative regardless of whether the representative is authorized or not.
- c. **Portals for authorized representatives**: Authorized representatives have access to the Authorized Paid Representative Portal and the Authorized Representative Permanent Residence Portal where they can manage their clients’ applications.

The issue of the IRCC web pages is that they particularly emphasize that applicants don’t need a representative. Below a screenshot of the “Learn about representative” page illustrates how emphatic the message is.

### You don't need to hire a representative!

It's your choice. Using one will not draw special attention to your application and doesn't mean we'll approve it.

You can get all the [forms and instructions](#) you need to apply for a visa, a permit or citizenship for free on this website. If you follow the instructions, you should be able to fill out the forms and submit them yourself.

Beware of fraudulent representatives. Learn more about [how to protect yourself from fraud](#).

Though CAPIC fully understood the good intention behind such an empathetic statement, many applicants are not able to complete the immigration process by themselves (DIY) because of a lack of understanding of the process, law and technology required. To keep abreast and informed, authorized practitioners, even though vigorously trained, and studying constantly, agree that it takes tremendous effort to be and remain competent as an authorized representative. Discouraging representation lends credence that handling immigration applications is not legal practice and indeed a simple process. As a result, if applicants are not able to or not willing to DIY, the statement may serve as an assurance that hiring someone who claims to know about the system would suffice. In addition, while the IRCC notice emphasizes only authorized



representatives can provide charged services and advice, neither the criminal consequences of the unauthorized practice for UAPs nor the possible misrepresentation consequences for applicants are stated.

The form IMM5476, applying to both authorized representatives and non-authorized representatives, has the same issues. The [IRCC Use of Representative guide](#) puts the authorized representatives and non-authorized representatives side by side, naming them “representative.” In addition, the Form doesn’t have an interpreter declaration section, meaning someone may use this to their advantage, claiming their innocence on the grounds of their limited language proficiency.

### (3) Measures taken by the Immigration and Refugee Board

- a. **Separation of the forms:** The IRB’s approach to dealing with authorized representatives and non-authorized representatives are different. Authorized representatives fill out the [Counsel Contact Information Form](#). The Form only needs to be filled out by authorized representatives and submitted to the IRB once. A new one is only required when there are changes to the contact information of the counsel. Counsel’s information is also part of the IRB’s applicants’/appellants’ application/notice of appeal forms, which applicable only to authorized representatives. Non-authorized representatives need to fill out [Notice of Representation Without a Fee or other Consideration](#). The form contains an interpreter’s declaration section. Both the applicant/appellant and the retained non-authorized representative are required to sign this form. The form states, “Any subsequent finding by the IRB that a person is, in fact, an unauthorized paid representative, may be disclosed to Immigration, Refugees and Citizenship Canada (IRCC), the Canada Border Services Agency (CBSA) and the Department of Justice Canada (DOJ) in accordance with section 8(2)(a) of the *Privacy Act*; and to the College of Immigration and Citizenship Consultants (CICC), the relevant law society of the province or territory, the Chambre des notaires du Québec and the broader public by way of notice on the IRB website, in accordance with section 8(2)(m) of the *Privacy Act*.”
- b. **Public interest decisions:** The IRB has a section, [IRB decisions of public interest](#), that publicizes its decisions concerning UAPs.
- c. **UAP reporting:** The IRB actively reports UAPs to responsible regulators.

Separation of the forms to be used by authorized representatives and non-authorized representatives and incorporating authorized representatives’ information in application/notice of appeal forms send out a clear message to applicants/appellants that these two types of representatives are fundamentally

different. Such measures make it easier for applicants/appellants to identify unauthorized practice for self-protection.

The interpreter section in the form for non-authorized representatives closes the door for unscrupulous persons in using none or limited language level as an excuse to evade their responsibility if any.

### **(3) Measures taken by the provinces and territories**

Provinces and territories have implemented some measures to prevent UAPs. Most provinces and territories adopted an approach, similar to the IRCC's Learn About Representatives web pages. They include the explanation of the two types of representatives in their guides. New Brunswick, Newfoundland and Labrador, Ontario, and Prince Edward Island provided authorized representatives an authorized representative portal. A use of representative form is mandatory where applicants retain a representative, either authorized or non-authorized. Some have their own form, and some use IMM5476.

Alberta and British Columbia are the two provinces that not only define authorized representatives in their guides but also clearly states the consequence of using a paid non-authorized representative in their use of representative forms.

- a. **Alberta Advantage Immigration Program (AAIP):** AAIP's [Alberta Advantage Immigration Program Use of Representative Form](#) clearly defines who are authorized representatives. In addition, both the applicant and the non-authorized are required to declare that no payment or compensation exists when filling out the form. It reads "I acknowledge that the Alberta Advantage Immigration Program will only conduct business with a representative who is unpaid or, if paid, who is a member in good standing of a provincial law society, the Chambre des notaires du Québec, or the College of Immigration and Citizenship Consultants (CICC), and that if the paid representative is not a member in good standing with any of these organizations that the may [sic] be returned or declined."
- b. **British Columbia (BC):** BC has its provincial immigration statute and regulations. [Paragraph 3\(3\)\(b\)](#) of *Provincial Immigration Programs Act*, SBC 2015, c-37 prescribes the situation where applications may be refused if applicants' representatives don't meet prescribed requirements. [Section 4](#) of the *Provincial Immigration Programs Regulation*, BC Reg. 20/2017, specifies the prescribed requirements as

charged representatives must be authorized representatives. British Columbia Provincial Nominee Program (BC PNP)'s Use of a Representative Form for [Applicant](#) and [Employer](#) share a common section: Section 2 Appointment of a Representative, which reads, "I understand that if a person named as my **unpaid representative** is found by the Province to have charged fees for, or otherwise benefited from, acting as my Representative, the Province will revoke such person's eligibility to serve as my Representative and may decline/cancel my application/approval to the BC PNP." This statement also included in all BC PNP application guides.

Stating the consequences of using a paid unauthorized representative may seem repetitive, as both IRCC has stated it on the relevant web pages and provinces/territories in their guides. However, not all applicants access web pages or go through guides, and even they do, it's not easy to hold them responsible for collaborating with a UAP. All applicants must sign the use of representative forms and they are responsible for what they signed.

### **3. The remedies sought by both victims and non-victims of immigration fraud**

CAPIC holds the position that victims of immigration fraud should not be penalized. The remedies sought by victims who are generally innocent include a review based on innocent misrepresentation, and/or humanitarian and compassionate (H&C) considerations depending on their individual situation. Unfortunately, the same remedies are often sought by others who lied or try to lie their way into Canada. These individuals' successes have a negative impact on the integrity of Canadian immigration system. While the remedies for protection for the victims of immigration fraud should be in place, a better option, which is to prevent immigration fraud and manipulation by such persons should be developed in full scale. Distinguishing the real victims from those who purposely and fraudulently circumvent the immigration system immigration is necessary. Considerations and compassion without distinction between the two offers a momentum to UAPs and unscrupulous individuals to circumvent the system to get their "clients" or themselves into Canada and then take advantage of the compassionate tradition of Canada.

## **Recommendations**

Minister Miller mentioned some measures to enhance the integrity of the Canadian immigration system during his interview with CBC's *The House* on August 27, 2023, including working with provinces/territories and designated learning institutions, tightening up the rules on private colleges to ensure that their international student' admissions are in line with their spaces and

capacities, and working with trusted partners to award good actors and punish bad actors.

CAPIC believes those measures will be effective. Based on the factors in the Background section, CAPIC also recommends the following:

- 1. Close the loopholes in the current system:**
  - a. Use of representative for authorized representatives:** Adopted IRB's approach to separate the use of representative forms for authorized representatives and non-authorized representatives.
  - b. Catch misrepresentative at the outset by adding a question:** Add a question about the use of representatives in all immigration application forms: "Have you been assisted by any third party with this application?" If such a question is standard on all types of immigration application forms, it will prevent fraud complicities to play victims when being caught and prevent taking advantage of the humanitarian and compassionate consideration class.
  - c. State the consequence of misrepresentation by using a UAP in all immigration application forms:** If such a consequence is clear made aware to applicants at the outset, the enforcement of inadmissibility on the grounds of misrepresentation will not be easily disputed on the grounds of honest mistake or procedural fairness.
  - d. Improve the operation of outsourcing organizations:** In the arrangement between the Government of Canada and the Visa Application Centers (VACs) to require VACs not to deal with UAPs.
- 2. Enhance the enforcement of statutory measures:**
  - a. Implement policies to encourage reporting UAPs and immigration fraud.
  - b. Provide authorized representatives with a communication channel.
  - c. Post public interest decisions of the IRB and the courts on the IRCC's Learn about representatives web page.
  - d. Take action to crack down UAP practice in Canada.
  - e. Seek international collaboration to tackle UAP practice outside Canada.
  - f. Examine the issue of overstaying and strengthen resources to prevent it.
- 3. Engage the College of Immigration and Citizenship Consultants**
  - a. Report UAPs to the College to seek injunctions.

## Conclusion

CAPIC supports a strong and robust immigration system, one that safeguards the integrity of the system in its entirety. As the voice of the licensed immigration and citizenship consultants, CAPIC strives to work with stakeholder partners to

improve and enhance the system, while also helping members maintain ethics, competency and professionalism. This too, with the goal of safeguarding and improving the integrity of Canada's immigration system. CAPIC is ready and willing to work with IRCC where further assistance and input is required.

## About CAPIC

**The Canadian Association of Professional Immigration Consultants (CAPIC)** is the professional organization representing the interests of Canadian Immigration Consultants. 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.

## Contact Us:

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