

**November 1, 2022**

## **CAPIC's Input to the Agent Regulation Update**

CAPIC received the first three questions via email and the last two questions during the meeting with CICC on September 25, 2022. The input below as answers to the questions are based on input from CAPIC members, operational staff, and legal counsel.

### **1. What is the rationale for licensees to use an agent?**

The primary rationale for licensees to use an agent is for marketing purposes. It could also be for cost-saving purposes compared to hiring employees.

Based on the result of a CAPIC survey among its members, licensees generally use agents to reach potential clients where the licensee might not speak the local language, to filter potential clients, and to expand the reach of their services and client base.

Some licensees also use an agent, in addition to marketing, for support and administration purposes, especially for communication and translation.

Some licensees avoid using an agent either because of their previous experience indicating that they could not come up with any effective mechanism to ensure the compliance of the agent or because of their belief that professionals should not rely on agents.

### **2. How to address client confusion in discerning who is authorized to perform a given task (the agent vs a licensee)?**

CAPIC's survey results show most licensees working with an agent address this issue through the following measures:

1. Request the clients to sign the service agreement and IMM 5467 Form (“Use of Rep Form”) either in person, or directly, or sign a disclaimer together with the service agreement.
2. Explain the roles of the agent and licensee to the clients and include this as a provision in the service agreement.
3. Maintain direct communication with the clients.
4. Write the rules that agents are not allowed to provide immigration services and advice in the office.

Some licensees are of the opinion that the signing of the service agreement and agent agreement suffice, as the licensee’s and the agent’s duties are clearly stated in those agreements.

**CAPIC’s recommendations:**

1. CICC ought to set out mandatory and optional measures for licensees working with an agent to take to avoid such confusion. These may include *proactive* measures, *reactive* measures, and *monitoring* measures.
  - (1) Proactive/ preventative measures:
    - (a) Hiring procedure: Licensees implement more stringent hiring practices, such as requiring background checks (bankruptcy and insolvency filing checks; criminal record checks; business registration checks for non-individual agents) and referral letters from competent and trustworthy sources.
    - (b) Signing service agreement with clients directly: Licensees witness the clients sign the service agreement.
    - (c) Reviewing legal instruments and obtaining acknowledgment from both agents and clients: Licensees review the *Code of Professional Conduct*, *Agent Regulation*, and agent agreement thoroughly with their agents. Agents sign a form acknowledging that they have read and understood the *Code*, the *Agent*

Regulation, and their agent agreement, and agree not to provide prohibited services and advice. The clients (assisted by an agent) sign a form acknowledging that they understood that the agent cannot provide prohibited services and advice.

- (d) Communication record keeping: Licensees require that communications with and instructions to agents be kept in writing.
  - (e) Direct communication: Licensees ensure that they have a means of connecting directly with new clients such that sensitive information and payment of fees are transmitted to the licensee directly, and do not pass through the agent.
  - (f) Potential client disclosure: Licensees require, as part of the agent agreement, that agents must be prepared to disclose all communications with potential clients if asked, and that agents must disclose to all potential clients that the agent is not permitted to provide any representation or advice respecting Canadian citizenship and immigration to Canada.
- (2) Reactive measures:
- a. Agent agreement termination: Agent agreements provide that if the agent is discovered or suspected to have offered or provided prohibited services, the agent agreement will be immediately terminated, and the agent will be required to remit all client and potential client information to the licensee.
- (3) Monitoring measures:
- a. Training: Licensees provide training to agents to clarify the role of an agent as needed.
  - b. Marketing material monitoring: In marketing materials (including agents' brochures, newsletters, and websites), set out the scope of an agent's permitted activities so that potential clients are informed about the limitations on agents' authorized tasks. Licensees publish a list of the agents they work with on their website so that potential clients know who is authorized to represent the licensees.

- c. Compliance review: Licensees arrange for regular check-ins with agents to conduct a review of the agent's Compliance.
- d. Self-assessments: Agents complete periodic compliance self-assessments in which they set out the scope of their activities and affirm that they are not providing representation or advice.

### 3. How to address the risk that agents are already unauthorized practitioners (for example, foreign consultancy firms) or becoming unauthorized practitioners?

Based on the survey results and our knowledge, it is difficult to prevent agents in other jurisdictions from acting as *de facto* representatives. Many agents are already operating in the field as advisors and may even be licensed to do so in their jurisdiction.

#### **CAPIC's observations:**

Firstly, licensees should not enter into representative-agent relationships with unauthorized practitioners (UAPs), as it puts RCICs in a position of working with parties who knowingly breach s. 91(1) of IRPA, which compromises the integrity of both the Canadian immigration system and the immigration and citizenship profession.

Secondly, RCICs may not have something effective in their toolbox to prevent their agents from acting as UAPs. To prevent the practice of engaging UAPs as agents or to minimize the risk of agents becoming UAPs, CICC ought to utilize three tools: ***intensive public education, full-scale UAP crackdown, and clear professional guidelines and more severe penalties for non-compliance***. As the primary motive for licensees using an agent is for marketing purposes, once licensees are in an advantageous position when competing with UAPs, licensees would have little to gain but much to lose from using UAPs. As a result, the motive to use UAPs for licensees diminishes; as well as the motive for agents to become UAPs.

In a nutshell, building a strong and reputable immigration and citizenship profession is the basis for addressing this issue.

### **CAPIC's recommendations:**

CICC may consider taking the following measures to facilitate building a strong and reputable profession:

#### 1. Intensive public education:

- (1) Domestic public education: work with public libraries, school boards, designated learning institutions, Canadian employers, Canadian notaries public, immigration and refugee service providers, translators and interpreters associations and organizations alike to deliver seminars and webinars to raise awareness of UAPs and warn of the risks of using UAPs.
- (2) International public education: work with designated organizations and relevant organizations, e.g., language test centers, educational credential assessment organizations (most of them are in Canada), international migration organizations, foreign translators and interpreters associations, foreign notaries public, provincial immigration offices (when they do international recruitment events), etc. to deliver seminars and webinars for the same effect.

#### 2. Full-scale UAP crackdown

- (1) Domestic cooperation: work with IRCC, CBSA and RCMP to crack down on unauthorized practice on an ongoing basis. The first step is to persuade IRCC to include a line in the Use of Rep Form, stating “if you compensate your representative in any form, you must use an authorized representative” and making the “authorized representative” a hyperlink to the “[Learn about representative](#)” web page. The Use of Rep Form should also state that “it is a criminal offence for an unauthorized representative to charge you.” IRCC should have a motive to clarify this form given that their officers’ decisions refusing applications involving alleged misrepresentations on failure to disclose the use of

UAPs have been set aside on judicial review by the Federal Court. See *Lyu v. Canada (Citizenship and Immigration)*, 2020 FC 134; *Ge v. Canada (Citizenship and Immigration)* 2017 FC 594 as examples.

- (2) International coordination: Coordinate with responsible foreign regulators to address the reality that, even though an individual may be licensed to provide consulting and advisory services in their local jurisdiction, they are not authorized to provide representation or advice in respect of Canadian citizenship or immigration, if not licensed in Canada.
3. Clear professional guidelines and more severe penalties for non-compliance
  - (1) Clear professional guidelines: set mandatory and optional rules in the Agent agreement for the licensees to follow that discourage agents from performing prohibited services and advice as stated in the recommendations to address Question 2.
    - (a) Set up further requirements for engaging an agent: In the Agent regulation, establish a brief exam as an eligibility requirement for licensees using agents or planning to engage agents. Only RCICs who have passed the exam can maintain their registered agents or engage agents if they do not have existing agents.
    - (b) Agent clause in service agreement: Include a mandatory clause in the service agreement identifying the roles and responsibilities of an agent including the name of the agent.
    - (c) Varied professional liability insurance: Negotiate an expansion of the RCIC policy of insurance to expressly include working with agents as an insured service. Licensees ought to be protected where, despite having taken all appropriate safeguards, their agent performs prohibited activities that result in damage or harm to the client. Licensees who work with agents could opt to pay more for an insurance policy that covers these risks, while licensees who choose not to work with agents could continue paying their regular insurance policy rate.

- (2) More Severe penalties for non-compliance: Licensees engaging UAPs as agents or working with UPAs are subject to more severe penalties, including license suspension, higher fines, Agent regulation PME re-taking, agent regulation exam re-sit, ineligibility to register an agent for a certain period.

#### **4. Should registered agents be publicized in the CICC public register under the licensee's registration page?**

CAPIC would answer yes with caution provided this practice will not cause further confusion about the distinction between the role of a licensee and an agent.

##### **CAPIC recommendations:**

1. Two-way search approach: Agent names should be publicized in a searchable CICC public register that indicates which licensee(s) they are registered under. Licensee registration pages should also list which agents are registered under them. That is, the public should be able to determine if an agent is properly registered by searching either the agent's name or the licensee's name. But when searching the agent's name, it still directs to the licensee's register.
2. Website notices: Agents should be required to list their affiliated licensee's information on their website(s) and direct the public to the licensee's registration page on the CICC public register. Likewise, a licensee's website should clarify which agents are registered under them.
3. Mandatory no services or advice statement: The CICC website should clarify that agents are not permitted to provide Canadian immigration or citizenship services, representation or advice, and that clients or potential clients should contact their authorized representative or CICC if they suspect that a UAP is providing unauthorized services. This disclaimer should appear in a prominent location, including on the CICC searchable public registrar for agents and on the licensee's registration page.

**5. UAPs are not eligible to be registered as agents by licensees. However, could there be any circumstances that a UAP may be eligible?**

There could be a circumstance where a UAP, operating under the name of “immigration consultancy” in a foreign jurisdiction, does not provide Canadian immigration and citizenship services and advice. In this sense, having such a name does not mean it’s a UAP.

However, according to [s. 77\(a\) of the \*College of Immigration and Citizenship Consultants Act\*](#), UAPs are not allowed to use the title of immigration consultant or its variations. In the situation above, the organization, bearing “immigration consultancy” or variation in its name, either legal name or operation name, has to change its name before it can be registered as an agent by a licensee. Otherwise, allowing such an agent will be in direct conflict with s.77(a) of the *Act*.

**CAPIC’s observations:**

There are also organizations which do not bear “immigration consultancy” or similar phrases in their names that are UAPs, for example, some foreign travel agencies, educational agencies, and overseas employment agencies.

If we use a foreign language to run a search for immigration consultants, we’ll find several UAPs publicly offering prohibited services overseas and even in Canada.

Exempting organizations that bear the appearance of UAPs but are not UAPs at this point where (i) licensees are in a disadvantaged position when competing with UAPs and, (ii) UAPs come in various forms, may bring in unintended consequences.

The profession has to take a tough and unified stand against UAPs. The middle ground could lead to the victory of UAPs and the gradual death of the profession.



### **CAPIC's recommendation:**

1. UAPs are ineligible to be an agent whatsoever. It is likely a short-sighted solution for the profession to open a narrow path to admit UAPs as agents either because there are rare situations that some seemingly UAPs are not UAPs or because of the reality that UAPs dominate the market. Creating exceptions permitting the registration of UAPs may, in the short term, bring clients to licensees. In the long run, it would cause confusion, encourage UPAs to seek out loopholes and improperly claim that they qualify for the registration exceptions, and increase licensees' reliance on UAPs in foreign markets. With the harsh truth of UAPs running rampant, creating even narrow exceptions would likely worsen the disadvantaged position of licensees, especially ethical licensees.

### **6. Other General comments on the current Agent Regulation:**

Generally, to ensure agents do not provide immigration and citizenship services and advice, it is important that CICC clarifies the obligation of licensees and set out the specific mandatory and optional measures for licensees to follow in order to satisfy their obligation in light of the lack of control and monitoring of agents in foreign jurisdictions.

CICC may actively seek licensees' feedback in the process of Agents Regulation updating.

The use of "retainer agreement" in the [Agent Regulation](#) is outdated. It needs to be replaced by "service agreement".