



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

Review of Proposed Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees

Table of Contents

Preamble.....	2
Executive Summary	2
Background.....	4
Recommendations.....	5
Interpretation.....	5
1. Definitions.....	5
Professional Conduct.....	5
11(d). Intimidation and coercion.....	5
13. Inducement.....	5
15. Conflicts of interest.....	8
16. Unauthorized behaviours.....	8
17. Recruitment services.....	9
Relationship to Clients	10
23. Initial consultation.....	10
25. Obligation of confidentiality	11
26. Complaints.....	11
28. Fees	12
32. Mandatory termination of service agreement.....	14
Relationship to the College and Other Persons	14
36. Mandatory reporting to College.....	14
39. Conduct of fellow licensee	15
Conclusion	16
Appendix A – Comparison Chart, Confidentiality Provisions	17
Appendix B – Comparison Chart, Contingency Fees.....	20

About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of Canadian immigration and citizenship consultants. CAPIC has over 3400 members and 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 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 immigration stakeholder and consults with federal and provincial governments on legislation, policy, and program improvements and changes.

Preamble

CAPIC is submitting this review in response to the public notice issued in the *Canada Gazette*, Part I, Volume 155, Number 20, on May 15, 2021 regarding the proposed *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees*.

Executive Summary

CAPIC strongly supports the proposed *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees* (the "**Proposed Code**"). CAPIC thanks the Standing Committee on Immigration and Citizenship (CIMM) for its bipartisan support of greater industry regulation, the Department of Citizenship and Immigration for its preparation of the Proposed Code, and the Government of Canada for its approval of self-regulation. CAPIC believes the Proposed Code improves existing regulatory processes while strengthening client protections.

CAPIC has identified several areas of the Proposed Code where greater clarity and additional provisions will bolster consumer safeguards. Such additions will further define legitimate operators in the industry while providing precise procedures to address licensee misconduct. These recommendations are also formulated to ensure that clients receive the same protection standards industry-wide, regardless of which authorized representatives they have chosen to employ. As such, this review highlights discrepancies between the Proposed Code and similar codes for other professionals authorized to act as representatives on immigration and citizenship matters in Canada, including lawyers and paralegals. In preparing this review, a variety of professional codes of conduct from across the country were consulted. This review specifically references codes of conduct governing authorized immigration representatives, including the following guidelines:

- Ontario Rules of Professional Conduct ("[LSO Rules](#)")
- Ontario Complete Paralegal Rules of Conduct ("[Paralegal Rules](#)")
- Solicitors Act, R.S.O. 1990, c. S.15 ("[Solicitors Act](#)")

By referencing similar codes of conduct from across the immigration industry, this review highlights areas where the Proposed Code diverges from industry norms to the detriment of clients.

CAPIC welcomes the addition of the Proposed Code to the *College of Immigration and Citizenship Consultants Act* (the “**College**”) as the culmination of a decade-long effort for greater regulation of the immigration consultancy profession and more robust consumer protection mechanisms. The Proposed Code achieves these aims and with minor modifications, will provide the necessary framework for a rigorous and equitable guideline that will both improve the reputation of the consultancy profession and enhance public confidence of the industry as a whole.

Background

Over the past decade, CAPIC has worked in productive collaboration with the Government of Canada and relevant stakeholders to advocate for and achieve stricter industry regulations. The goal of these efforts has been to safeguard the interests of clients and the public. This advocacy included support for increased disciplinary powers for the regulator to curtail the persistent activities of unauthorized immigration practitioners (UAPs). This is vital for the integrity of the industry as many marginalized newcomers are particularly vulnerable during the immigration and citizenship process.

CAPIC's advocacy efforts have included support for the College. CAPIC's longstanding endorsement of regulation under federal statute includes letters, policy submissions, studies, recommendations, and presentations since 2015, with research dating to the inception of ICCRC in 2011. CAPIC has always used its position as the official voice for immigration consultants to petition for progress on issues of regulation, client protection, and public confidence.

CAPIC's endorsement of the College acknowledged the necessity of its strong self-regulatory elements, including granting ministerial power to make required changes. When reviewing the Act in 2019, CAPIC noted several components of the Act that required stricter consumer protections, including the need for a licensee-client privilege stipulation. This review has the same impetus – increased protections for clients.

In reviewing the Proposed Code, CAPIC has continued its history of advocacy for greater consumer safeguards. This review is meant to enhance the framework of the Proposed Code, to better protect licensees and clients, while strengthening public confidence.

Recommendations

The following recommendations are organized according to the relevant sections of the Proposed Code. Areas of concern are indicating where relevant and substitutions or changes offered where required. Recommendations are based on similar codes of conduct in related professions.

Interpretation

1. Definitions

The Proposed Code does not expressly require that licensees hold advance payments from clients in a trust account, providing only that licensees must “hold the funds in trust in a *client account*” (section 29(a)).

To ensure that clients’ funds are not vulnerable to the claims of creditors or others against the licensee, CAPIC submits that the Proposed Code ought to include a definition of “client account” as follows:

1 (1) *client account*

means a trust account kept separately from the licensee’s general account, used exclusively for immigration or citizenship consulting services;

Professional Conduct

11(d). Intimidation and coercion

CAPIC strongly supports the provisions in the Proposed Code prohibiting licensee conduct that is exploitative toward clients. CAPIC is concerned, however, that the specific prohibition in section 11(d) of the Proposed Code against use of knowledge about “social and cultural norms” to exploit “a situation” is too vague and ill-defined.

It is unclear what the socio-cultural “norm” is, given that Canadian culture is multi-faceted with customs that may fluctuate and conflict. In the context of the provision of immigration advice, where the socio-cultural mores with which clients are familiar can vary dramatically, it is inappropriate to hinge a prohibition on an unclear concept that carries different meaning for different individuals. We are not aware of a code of conduct for any profession, or any Canadian legislation, containing this language.

CAPIC recommends the deletion of section 11(d) of the Proposed Code, as the introductory words of section 11, which extend to all forms of intimidation and coercion, and the examples in sections 11(a), (b), and (c), and (e), adequately guard against inappropriate behaviour.

13. Inducement

Section 13 of the Proposed Code should expressly provide for, and set appropriate protections around the giving and receiving of, referral fees. Such fees are permitted for other regulated professions, including immigration lawyers and paralegals in Ontario.

There should be symmetry between the regulation of fees of immigration lawyers and of immigration consultants.

Referral fees can be helpful in cases where clients should be connected to a different licensee or service provider who is better suited to address their needs. This would foster improved service delivery, including by encouraging licensees to refer their clients to more experienced or specialized licensees when appropriate. It would also acknowledge and better control practices which are already commonplace, such as agreements between licensees and recruiters or representatives working in a client's country of origin to connect individuals with immigration professionals.

Section 13 as it is currently drafted also overreaches in that it captures agreements that licensees may form with education partners to connect clients with other community support services as they take steps to establish their lives in Canada. It may also capture business activities of licensees that do not relate directly to immigration or citizenship consultation.

CAPIC recommends that the current section 13 be revised to include provisions that permit and regulate referral agreements. The Proposed Code ought to also include a definition of "referral", "referral fee" and "referral agreement" for the purposes of s. 13 and other sections of the Proposed Code on the disclosure of conflicts of interest, as follows (changes to the current language are underlined):

13 (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) 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 for the purposes of providing immigration or citizenship consulting services.

13 (2) Notwithstanding subsection (1), a licensee may accept and a licensee may offer a fee for the referral of a client provided that:

(a) the referral fee is fair and reasonable and does not increase the total amount of the fee payable by the client;

(b) a referral agreement has been entered into at the time of the referral or as soon as practicable after the referral;

(c) the licensee who receives the referral has the expertise and ability to handle the matter;

(d) the referral was not made because the referring licensee;

(i) has a conflict of interest; or

(ii) was a licensee whose registration was suspended when the referral was made and who was accordingly not permitted to act on the matter; and

(e) the amount of the referral fee shall not exceed [percentage]¹ of the fees paid to the licensee who received the referral; and

13 (3) For the purposes of this section,

“referral” includes recommending another licensee to provide immigration or citizenship consulting services for anyone except where: (a) the work is done through the same consultancy firm in which the referring licensee primarily practices; or (b) the work is done by two or more licensees who have entered into a co-counselling agreement with the knowledge and agreement of the client.

“referral fee” includes any financial or other reward for the referral or recommendation of immigration or citizenship consulting services whether the referral fee is direct or indirect and whether the referral fee is past, current or future. However, a referral fee does not include a referral of other work by the licensee who received the referral.

“referral agreement” means a signed written agreement between the referring licensee, the licensee who receives the referral and the client which must include the following information:

(a) confirmation that the client has been advised and understands that the client has no obligation to accept the referral;

(b) confirmation that the client has been provided with information about the requirements in this Code for payment and receipt of referral fees and is granted a reasonable opportunity to review and consider that information;

(c) confirmation that the referring licensee has recommended at least two licensees to the client and, if not, disclosure of the reason that it has not been reasonably possible to do so;

(d) a provision that the client is free to retain a licensee other than the one who receives the referral;

(e) the reason(s) that the referring licensee has recommended the specific referee to the client;

(f) full and fair disclosure of the relationship between the referring licensee and the licensee who receives the referral;

¹ Note that the Law Society of Ontario [Paralegal Rules](#) and [Rules of Professional Conduct](#) both set this percentage at 15% of the fees paid to the paralegal or lawyer who received the referral for the first \$50,000 of such fees for the matter and 5% of any additional fees for the matter to a maximum referral fee of \$25,000 (see Paralegal Rules r. 5.01(15)(e) and LSO Rules r. 3.06-6.1(1)(e)).

(g) confirmation that no referral fee will be paid or payable unless and until the licensee who receives the referral is paid for his or her immigration or citizenship consulting services; and

(h) full and fair disclosure of the referral fee including the circumstances in which the referral fee is payable and the basis upon which the amount of the referral fee is determined.

15. Conflicts of interest

CAPIC supports the inclusion of an obligation on licensees to disclose the nature and extent of any conflict of interest prior to providing services to a client. However, CAPIC submits that section 15 of the Proposed Code does not go far enough. Given the multi-disciplinary practice of immigration and citizenship consultation and the relationships between consultants and other non-licensee partners, licensees should be required to disclose their affiliations and agreements with related organizations or persons. CAPIC argues that the below language ought to be added to section 15, after the provisions on disclosure and the duty to avoid conflicts of interest, as follows:

Duty to Disclose Affiliations²

15 (3) A licensee shall not provide immigration or citizenship consulting services jointly with related services of an affiliated, non-licensee organization or person without disclosing the following:

- (a) the existence of the affiliation;
- (b) any possible loss of confidentiality because of the affiliation;
- (c) any role of the licensee in providing the related services; and
- (d) any financial, economic or other arrangements or agreements between the licensee and the affiliated organization or person that may affect the licensee's objectivity or the relationship of trust with a client, including whether the licensee shares in the revenues, profits or cash flows of the affiliated organization or person.

16. Unauthorized behaviours

Section 16(b) of the Proposed Code provides that clients cannot consent to entering into a transaction with a licensee unrelated to the provision of immigration or citizenship consulting services unless the transaction is fair and reasonable and the client has received independent legal advice ("ILA") from a lawyer. ILA may be inaccessible for certain clients due to financial barriers, language constraints and other limitations. Requiring ILA before entering into fair, unrelated transactions that unduly limit clients' access to services. Clients should be permitted instead to seek a second opinion from another relevant, independent professional capable of advising on the transaction such

² Compare Rule 3.4-11.1 of the Law Society of Ontario [Rules of Professional Conduct](#).

as an accountant, financial advisor or real estate consultant, who may be more accessible to the client and better-positioned to advise on the implications of the conflict.

CAPIC submits that the language in section 16 be revised as follows (changes are underlined):

16 The following behaviours constitute a conflict of interest to which a client cannot consent: ... **(b)** undertaking any other transactions with a client, other than transactions in relation to the provision of immigration or citizenship consulting services, unless the transaction is fair and reasonable and the licensee recommends that the client receive independent legal advice from a lawyer authorized to practice in the jurisdiction where the transaction takes place or the advice of another relevant professional;

17. Recruitment services

Section 17 of the Proposed Code should be broadened to reflect the reality that some licensees collaborate with recruiters to recruit foreign nationals for purposes other than employment, such as the placement of clients in educational institutions.

CAPIC also submits that while it is appropriate to require licensees to disclose whether they have received a fee from an employer or other organization for recruiting a client, it is not necessary for the licensee to disclose the exact amount of the fee. Section 17 of the Proposed Code ought to be revised as follows (changes are underlined):

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

Conditions

(2) However, a licensee may provide both immigration or citizenship consulting services and 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 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 recruitment services;

(d) discloses to the client that the licensee has received a fee from an employer or other organization for recruiting the client to work for the employer or join the organization;

(e) complies with all applicable legislation governing the provision of 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.

Definition of *recruitment services*

(3) For the purposes of this section and section 15, *recruitment services* means services that consist of

(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;

(d) seeking or obtaining a placement within an organization or educational institution for a client;

(e) assisting or advising any person with respect to seeking or obtaining a placement within an organization or educational institution for a client;

(f) assisting or advising an organization or education institution representative or another person with respect to admitting a client;

(g) referring a client to another person who offers any of the services referred to in paragraphs (a) to (f), above.

Relationship to Clients

23. Initial consultation

CAPIC submits that section 23 of the Proposed Code ought to clarify that consultation agreements are required before an initial consultation between a licensee and potential client whether or not a fee is charged for the consultation, and whether or not a section 24 Service Agreement is later entered into. Section 23 ought to be revised as follows (changes are underlined):

23 (1) 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 regardless of whether a fee is charged for the initial consultation and regardless of whether a subsequent service agreement is entered into.

25. Obligation of confidentiality

Section 25 (1) of the Proposed Code provides that licensees must take “measures that are necessary to maintain the confidentiality of that information indefinitely.” The section should be bolstered by clarifying that the *obligation* of confidentiality continues indefinitely (changes are underlined):

25 (1) A licensee must keep confidential all information in relation to a client or former client, or a client or former client's business affairs, that was acquired in the course of their professional relationship with that client.

25 (2) The obligation of confidentiality under subsection (1) continues indefinitely after the professional relationship between the licensee and the client has ended and the licensee must take the measures that are necessary to maintain the confidentiality of that information indefinitely.

This clarification would ensure that communication between immigration consultants and their clients involving the provision of immigration advice remains confidential even after the professional relationship between them has ended. This language more closely tracks the wording in the Law Society of Ontario Rules³ and the Ontario Paralegal Rules.

Stronger confidentiality provisions would address an access to justice issue where only those who can afford a lawyer or paralegal can access solicitor-client privilege in relation to immigration and citizenship advice. Extending strong confidentiality obligations akin to solicitor-client privilege to licensees would ensure that clients benefit from protection over such advice, which can have fundamental importance to a client's life.

Indeed, in the future, Parliament may choose to pass legislation that grants the protection of privilege to communications between licensed immigration consultants and their clients. Such protection has already been extended to other federally regulated professions including patent and trade-mark agents under the *Patent Act*⁴ and *Trade-marks Act*.⁵ CAPIC strongly supports such an extension of privilege to the clients of immigration consultants.

26. Complaints

CAPIC submits that the complaints process outlined at section 26 of the Proposed Code is incomplete if it does not set out a path for the client to report their complaints to the College should they be dissatisfied with the response of the licensee.

Section 26 should also be revised to require that the licensee's response be provided in written form, allowing all parties to have the benefit of the written response should any

³ Law Society of Ontario, Complete Rules of Professional Conduct, [online](#). A comparison of the confidentiality provisions contained in the LSO Rules and Ontario Paralegal Rules versus those in the Proposed Code is set out in Appendix A.

⁴ R.S.C. 1985, c. P-4.

⁵ R.S.C. 1985, c. T-13. The provisions implementing statutory solicitor-client privilege between Canadian patent and trademark agents and their clients came into force on June 24, 2016.

further disciplinary process be undertaken by the College, as follows (changes are underlined):

26 (1) A licensee must, as soon as feasible, provide a written response to any complaints made to the licensee by a client in respect of the immigration or citizenship consulting services provided or in respect of any person assisting the licensee in the provision of those services.

(2) The written response of the licensee must also advise the client that if they are not satisfied with the response and if the client believes that the complaint relates to a contravention of this Code, the client may refer the complaint to the College.

28. Fees

The Proposed Code provides that all fees charged to a client by a licensee for immigration or citizenship consulting services must be fair and reasonable, but fails to set out factors for determining what is fair and reasonable in the circumstances. For greater certainty and transparency around licensee fees, CAPIC submits that section 28 of the Proposed Code should be modified to include factors for determining what is fair and reasonable, as follows (changes are underlined):

28 (1) All fees charged to a client by a licensee for immigration or citizenship consulting services must be fair and reasonable in the circumstances and disclosed in a timely fashion.

28 (2) What is a fair and reasonable fee will depend upon such factors as,

(a) the time and effort required and spent;

(b) the difficulty of the services rendered and importance of the services to the client;

(c) whether special skill or service was required and provided;

(d) the outcome obtained;

(e) fees authorized by statute or regulation;

(f) special circumstances, such as uncertainty of outcome or urgency;

(g) any relevant agreement between the licensee and the client;

(h) the experience and ability of the licensee;

(i) the estimate or range of fees given by the licensee in the services agreement; and

(j) the client's prior consent to the fee.

The Proposed Code should also provide for contingency fees. This would strengthen trust between the client and licensee, enabling the client to feel secure in the knowledge that remuneration depends on the successful delivery of services and the attainment of a given outcome or objective. It would also permit licensees to offer the same type of flexible payment arrangements that immigration lawyers and paralegals are already permitted to offer clients.⁶ The process of obtaining a particular result in the immigration context, however, depends on many factors which may be outside the control of the licensee. To balance the entrepreneurial risks associated with offering contingency fee arrangements, CAPIC submits that a licensee should be permitted to enter into an agreement in which the licensee's fee is contingent only in part, and up to a maximum of 50% of the total amount of the retainer where the balance of the retainer and the disbursements incurred by the licensee are payable further to invoices sent to the client.

CAPIC submits that the following provisions should be included in the services agreement and fees sections of the Proposed Code:

Content of service agreement

24 (3) The service agreement must include the following information: ...
(j) an estimate of fees, including the hourly rate and the anticipated number of hours, or an agreed fixed fee or contingency fee or, if the services are provided *pro bono*, a statement to that effect;

...

Contingency Fees

28 (5) A licensee may enter into a written agreement that provides that a portion of the licensee's fee is contingent on the successful completion of the services set out in the service agreement or on the attainment of an outcome in accordance with the client's instructions set out in the service agreement.

28 (6) In determining the appropriate contingency fee amount under subsection (5), the licensee shall advise the client on the factors that are being taken into account in determining the amount, including:

the time and effort required and spent;

the difficulty of the services rendered and importance of the services to the client;

whether special skill or service was required and provided;

likelihood of success in attaining the desired outcome;

the expense of pursuing the desired outcome;

⁶ A chart of the language contained in the Ontario Paralegal Rules, the LSO Rules, and the Solicitors Act regarding contingency fees is set out in Appendix B.

special circumstances, such as uncertainty of outcome or urgency;
any relevant agreement between the licensee and the client; and
the experience and ability of the licensee.

28 (7) The contingency fee amount agreed upon under subsection (6) shall be fair and reasonable, taking into consideration all of the circumstances and the factors listed in subsection (6), and shall account for no more than 50% of the total amount of the licensee's fees under the service agreement and shall not include disbursements which shall be charged to the client by a licensee in accordance with this section.

32. Mandatory termination of service agreement

Protection of client interests is of utmost importance in the regulation of licensees providing immigration and citizenship consulting services. For that reason, CAPIC submits that section 32 of the Proposed Code on the mandatory withdrawal of licensees should be expanded to include situations where the licensee lacks competence to continue providing services. It should also be modified to require a withdrawing licensee to provide the client with a referral to another, competent licensee, in order to ease the transition of the client's file and relieve the burden on the client to seek a replacement licensee (changes are underlined):

32 (1) A licensee must terminate a service agreement with a client if

- (a) the client no longer wishes to receive the services from the licensee;
- (b) the client, despite advice provided in accordance with subsection (2), asks the licensee to act in a manner that the licensee knows or ought to know is dishonest, fraudulent or otherwise illegal;
- (c) the continued provision of the services would place the licensee in a conflict of interest, unless the licensee obtains the client's consent in accordance with section 15, or
- (d) the licensee lacks the competence to continue serving the client and fulfilling their professional obligations.

32 (2) Where a licensee must terminate a service agreement in accordance with subsection (1)(c) or (d), they shall refer the client where possible to another licensee competent to provide the immigration or citizenship consulting services.

Relationship to the College and Other Persons

36. Mandatory reporting to College

The circumstances requiring immediate, mandatory reporting to the College should be expanded to include misappropriation or misapplication of monies held in the client account which, as set out above, CAPIC submits should be a trust account in order to

ensure that clients funds are not vulnerable to the claims of creditors or others against the licensee.

CAPIC also submits that to ensure client protection in the event of serious misconduct by a licensee, the licensee should be required to report to the College in any circumstance where their clients are likely to be severely prejudiced. CAPIC argues, therefore, that section 36 of the Proposed Code should be revised to read as follows (changes are underlined):

36 If any of the following circumstances arise, a licensee must report the circumstances to the Registrar as soon as feasible:

(a) the licensee becomes bankrupt or insolvent;

(b) the licensee has misappropriated or misapplied monies held in trust in a client account;

(c) the licensee is suffering from a physical or mental health problem or an addiction, verified by a health care professional, that limits the licensee's capacity to practice;

(d) the licensee is charged with or found guilty of an offence under an Act of Parliament;

(e) the licensee is subject to disciplinary or remedial measures – imposed by a tribunal, a regulatory body, an employment or human rights board or a similar body – in relation to any aspect of their professional affairs;

(f) any other situation where the licensee's clients are likely to be severely prejudiced.

39. Conduct of fellow licensee

CAPIC recognizes that the need to report licensee misconduct must be balanced by a need to avoid unnecessary minor complaints to the College that are unlikely to warrant the College's attention. The Proposed Code should be drafted to avoid the complaints process becoming overburdened and backlogged.

CAPIC is concerned, however, that the proposed requirement to “seek an explanation” from a fellow licensee who is suspected of misconduct compromises the anonymity of the licensee seeking to report serious wrongdoing, and could discourage such reports. It is submitted, therefore, that section 39 of the Proposed Code carves out matters requiring mandatory reporting listed at section 36 of the Proposed Code (changes are underlined):

39 (1) If a licensee suspects that a fellow licensee has engaged in conduct that is inconsistent with this Code, the licensee must, if possible, seek an explanation from their fellow licensee regarding the conduct.

Report to College

(2) If it is not possible to obtain an explanation of the conduct in accordance with subsection (1) or if, after having obtained an explanation, the licensee is of the view that their fellow licensee has engaged in conduct that is inconsistent with this Code, the licensee must report the conduct to the College as soon as feasible.

Exception

(3) Subsection (1) does not apply where a licensee suspects that a fellow licensee has failed to report circumstances set out at section 36. In that event, a licensee must report their fellow licensee to the College as soon as feasible.

Conclusion

The Proposed Code strengthens the College's existing client protections, provides clear professional conduct standards for licensees, and offers clarity regarding the disciplinary powers afforded to the College. CAPIC believes the Proposed Code's provisions will strengthen the integrity and reputation of Canada's immigration industry, the immigration consultancy profession, and further curtail the activities of unauthorized agents.

However, the Proposed Code does not fully address several critical issues; chiefly, recruitment services, referral and contingency fees, and confidentiality, including provisions for consumer protections on par with solicitor-client privilege. CAPIC's recommendations serve to enhance client protections while ensuring that consumers who choose licensees as authorized representatives are afforded the same protections as those who use the services of other immigration professionals.

CAPIC thanks the Government of Canada for the preparation of this guide and strongly supports the Proposed Code and the evolution of the industry toward enhanced consumer protection and self-regulation.

Appendix A – Comparison Chart, Confidentiality Provisions

The comparison chart below considers the confidentiality provisions contained in the LSO Rules and Ontario Paralegal Rules versus those in the Proposed Code.

Confidentiality		
LSO Rules (r. 3.3-1)	Ontario Paralegal Rules (r. 3.03)	Proposed Code (s. 25)
<p>*Note that this rule is expressly distinguished from the evidentiary rule of solicitor-client privilege. The ethical rule is wider and applies without regard to the sources of the information or the fact that others may share the knowledge – see commentary [2].</p>		
<p>3.3-1 A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless</p>	<p>3.03 (1) A paralegal shall, at all times, hold in strict confidence all information concerning the business and affairs of a client acquired in the course of their professional relationship and shall not disclose any such information unless... (con't below)</p>	<p>25 (1) A licensee must keep confidential all information in relation to a client or former client, or a client or former client's business affairs, that was acquired in the course of their professional relationship with that client and... (con't below)</p>
<p>3.3-1 (Commentary) [3] A lawyer owes the duty of confidentiality to every client without exception and whether or not the client is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client, whether or not differences have arisen between them.</p>	<p>3.03 (2) The duty of confidentiality under subrule (1) continues indefinitely after the paralegal has ceased to act for the client, whether or not differences have arisen between them.</p> <p>3.03 (3) The paralegal shall keep the client's papers and other property out of sight, as well as out of reach, of those not entitled to see them.</p>	<p>25 (1) A licensee must ... take the measures that are necessary to maintain the confidentiality of that information indefinitely.</p>
<p>3.3-1 A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship</p>	<p>3.03 (1) A paralegal shall, at all times, hold in strict confidence all information concerning the business and affairs of a client acquired in the course of their professional relationship and</p>	<p>25 (2) A licensee must not disclose confidential client information, or allow such information to be disclosed, unless the disclosure is</p>

<p>and shall not divulge any such information unless</p> <p>(a) expressly or impliedly authorized by the client;</p> <p>(b) required by law or by order of a tribunal of competent jurisdiction to do so;</p> <p>(c) required to provide the information to the Law Society; or</p> <p>(d) otherwise permitted by rules 3.3-2 to 3.3-6.</p> <p>3.3-1.1 When required by law or by order of a tribunal of competent jurisdiction, a lawyer shall disclose confidential information, but the lawyer shall not disclose more information than is required.</p>	<p>shall not disclose any such information unless:</p> <p>(a) expressly or impliedly authorized by the client;</p> <p>(b) required by law or by order of a tribunal of competent jurisdiction to do so;</p> <p>(c) required to provide the information to the Law Society; or</p> <p>(d) otherwise permitted by this rule.</p> <p>(4) A paralegal shall disclose confidential information when required by law or by order of a tribunal of competent jurisdiction.</p>	<p>(a) authorized by the client;</p> <p>(b) required or authorized by law;</p> <p>(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;</p> <p>(d) required by the College in accordance with the Act or any regulations or by-laws made under the Act;</p>
<p>3.3-3 A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.</p>	<p>3.03 (5) A paralegal may disclose confidential information when the paralegal believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.</p>	<p>N/A</p>
<p>3.3-6 A lawyer may disclose confidential information to another lawyer to secure legal advice about the lawyer's proposed conduct.</p>	<p>3.03 (8) A paralegal may disclose confidential information to a lawyer or another paralegal to secure legal advice about the paralegal's proposed conduct.</p>	<p>25 (2)(e) made to a person who is assisting the licensee in the provision of immigration or citizenship consulting services to the client;</p>
<p>3.3-5 A lawyer may disclose confidential information in order to establish or collect the lawyer's fees, but the lawyer shall not disclose more information than is required.</p>	<p>3.03 (7) A paralegal may disclose confidential information in order to establish or collect his or her fees.</p>	<p>25 (2)(f) necessary to collect an outstanding account; or</p>
<p>3.3-4 If it is alleged that a lawyer or the lawyer's associates or employees</p> <p>(a) have committed a criminal offence involving a client's affairs;</p>	<p>3.03 (6) In order to defend against the allegations, a paralegal may disclose confidential information if it is alleged that the paralegal or his or her employees,</p>	<p>25 (2)(g) required in the context of judicial or administrative proceedings to defend the licensee or a person who is assisting the licensee in the provision of immigration or</p>

<p>(b) are civilly liable with respect to a matter involving a client's affairs;</p> <p>(c) have committed acts of professional negligence; or</p> <p>(d) have engaged in acts of professional misconduct or conduct unbecoming a lawyer, the lawyer may disclose confidential information in order to defend against the allegations, but shall not disclose more information than is required.</p>	<p>(a) have committed a criminal offence involving a client's affairs;</p> <p>(b) are civilly liable with respect to a matter involving a client's affairs;</p> <p>(c) have committed acts of professional negligence; or</p> <p>(d) have engaged in acts of professional misconduct or conduct unbecoming a paralegal.</p>	<p>citizenship consulting services against allegations that the licensee or the person has</p> <p>(i) committed an offence involving a client's affairs,</p> <p>(ii) committed a violation involving a client's affairs in respect of which administrative penalties and consequences may be imposed,</p> <p>(iii) engaged their civil liability for an act or omission in relation to a client's affairs, or</p> <p>(iv) engaged in conduct that is subject to investigation by the College or a law society of a province or the Chambre des notaires du Québec</p>
<p>3.3-7 A lawyer may disclose confidential information to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a law firm, but only if the information disclosed does not compromise the solicitor-client privilege or otherwise prejudice the client.</p>		

Appendix B – Comparison Chart, Contingency Fees

The comparison chart below sets out the language contained in the Ontario Paralegal Rules, the LSO Rules, and the *Solicitors Act* regarding contingency fees.

Contingency Fees		
Ontario Paralegal Rules (r. 5.01)	LSO Rules (r. 3.6-2)	<i>Solicitor's Act</i> , RSO 1990, c. S. 15
<p>Contingency Fees</p> <p>5.01 (7) Except in quasi-criminal or criminal matters, a paralegal may enter into a written agreement that provides that the paralegal's fee is contingent, in whole or in part, on the successful disposition or completion of the matter for which the paralegal's services are to be provided.</p> <p>(8) In determining the appropriate percentage or other basis of a contingency fee under subrule (7), the paralegal shall advise the client on the factors that are being taken into account in determining the percentage or other basis, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery, who is to receive an award of costs and the amount of costs awarded.</p> <p>(9) The percentage or other basis of a contingency fee agreed upon under subrule (7) shall be fair and reasonable, taking into</p>	<p>Contingency Fees and Contingency Agreements</p> <p>3.6-2 Subject to rule 3.6-1, except in family law or criminal or quasi-criminal matters, a lawyer may enter into a written agreement in accordance with the <i>Solicitors Act</i> and the regulations there under, that provides that the lawyer's fee is contingent, in whole or in part, on the successful disposition or completion of the matter for which the lawyer's services are to be provided.</p> <p>Commentary</p> <p>[1] In determining the appropriate percentage or other basis of the contingency fee, the lawyer and the client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The lawyer and client may agree that in addition to the fee payable under the written agreement, any</p>	<p>Contingency fee agreements</p> <p>28.1 (1) A solicitor may enter into a contingency fee agreement with a client in accordance with this section.</p> <p>Remuneration dependent on success</p> <p>(2) A solicitor may enter into a contingency fee agreement that provides that the remuneration paid to the solicitor for the legal services provided to or on behalf of the client is contingent, in whole or in part, on the successful disposition or completion of the matter in respect of which services are provided.</p> <p>No contingency fees in certain matters</p> <p>(3) A solicitor shall not enter into a contingency fee agreement if the solicitor is retained in respect of,</p> <p>(a) a proceeding under the <i>Criminal Code</i> (Canada) or any other criminal or quasi-criminal proceeding; or</p> <p>(b) a family law matter.</p>

<p>consideration all of the circumstances and the factors listed in subrule (8).</p>	<p>amount arising as a result of an award of costs or costs obtained as a part of a settlement is to be paid to the lawyer. Such agreement under the <i>Solicitors Act</i> must receive judicial approval. In such circumstances, a smaller percentage of the award than would otherwise be agreed upon for the contingency fee, after considering all relevant factors, will generally be appropriate. The test is whether the fee in all of the circumstances is fair and reasonable.</p>	<p>Written agreement</p> <p>(4) A contingency fee agreement shall be in writing.</p> <p>Maximum amount of contingency fee</p> <p>(5) If a contingency fee agreement involves a percentage of the amount or of the value of the property recovered in an action or proceeding, the amount to be paid to the solicitor shall not be more than the maximum percentage, if any, prescribed by regulation of the amount or of the value of the property recovered in the action or proceeding, however the amount or property is recovered.</p> <p>Greater maximum amount where approved</p> <p>(6) Despite subsection (5), a solicitor may enter into a contingency fee agreement where the amount paid to the solicitor is more than the maximum percentage prescribed by regulation of the amount or of the value of the property recovered in the action or proceeding, if, upon joint application of the solicitor and his or her client whose application is to be brought within 90 days after the agreement is executed, the agreement is approved by the Superior Court of Justice.</p> <p>Factors to be considered in application</p> <p>(7) In determining whether to grant an application under subsection (6), the court shall consider the nature and complexity of the action or proceeding and the expense or risk involved in it and may consider such other factors as the court considers relevant.</p>
--	---	---

		<p>Agreement not to include costs except with leave</p> <p>(8) A contingency fee agreement shall not include in the fee payable to the solicitor, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as part of a settlement, unless,</p> <p>(a) the solicitor and client jointly apply to a judge of the Superior Court of Justice for approval to include the costs or a proportion of the costs in the contingency fee agreement because of exceptional circumstances; and</p> <p>Enforceability of greater maximum amount of contingency fee</p> <p>(9) A contingency fee agreement that is subject to approval under subsection (6) or (8) is not enforceable unless it is so approved.</p> <p>Non-application</p> <p>(10) Sections 17, 18 and 19 do not apply to contingency fee agreements.</p> <p>Assessment of contingency fee</p> <p>(11) For purposes of assessment, if a contingency fee agreement,</p> <p>(a) is not one to which subsection (6) or (8) applies, the client may apply to the Superior Court of Justice for an assessment of the solicitor's bill within 30 days after its delivery or within one year after its payment; or</p>
--	--	---



		(b) is one to which subsection (6) or (8) applies, the client or the solicitor may apply to the Superior Court of Justice for an assessment within the time prescribed by regulation made under this section.
--	--	---