



Canadian Association of  
Professional Immigration Consultants

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L'Association Canadienne des  
Conseillers Professionnels en Immigration

# ***Review of Bill C 97's College of Immigration and Citizenship Consultants Act***



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## About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization founded for Regulated Canadian Immigration Consultants (RCICs) on four pillars: Education, Information, Lobbying, and Recognition.

CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its members.

## Preamble

CAPIC strongly supports Bill C-97's *College of Citizenship and Immigration Consultants Act* and thanks the Standing Senate Committee on Social Affairs, Science and Technology for its consideration. The Act's provision of extra-territorial powers against unscrupulous unauthorized practitioners, which would otherwise not have been possible, will improve consumer protection significantly.

Over the last five years, CAPIC has worked diligently with the Government of Canada to strengthen professional regulation and has advocated for greater disciplinary powers for the regulator. Although we are satisfied with much of the Act, we wish to propose a handful of amendments that were drafted with consumer protection in mind.

Finally, we welcome the May 1 announcement that the Immigration Consultants of Canada Regulatory Council has named Queen's University Faculty of Law as the sole accredited English language provider, and Université de Sherbrooke as the sole French language provider, of a new Graduate Diploma in Immigration and Citizenship Law, to be launched in 2021. The ICCRC's major attempts at improving its regulatory processes based on the Standing Committee on Citizenship and Immigration (CIMM) recommendations in 2017, of which the Graduate Diploma is but one example, revealed a willingness to accept the Committee's identification of its deficiencies and address them positively. We firmly believe that the Council's progress is sufficient for maintaining the self-regulatory elements articulated in this government-controlled regulation Act.

## Privileged Information

**67.** We respectfully request a consultant-client privilege section (equivalent to a solicitor-client privilege section), which is a glaring omission from the Act. This privilege is assumed by the Supreme Court for notaries, lawyers, and paralegals, and in the last seven years it has been elevated to the level of a constitutional right protected under the *Canadian Charter of Rights and Freedoms*.

According to public information, solicitor-client privilege has been a top priority of the Supreme Court of Canada, which decided more privilege-related cases from 1999 to 2006 than in the previous 125 years (from 1875 to 1999). The Court recently declared that "protection of solicitor-client confidences is a matter of high importance."

Further research on this topic reveals that “there are three preconditions to establishing solicitor-client privilege: (i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.” The privilege covers any consultation for legal advice, litigious or otherwise, and exists independently of the immediacy of a trial or of a client seeking advice.

A legal memo prepared by professor Peter Hogg, at CAPIC’s request, on conferring such a privilege to immigration consultants and their clients confirms all the above, that it ought to apply equally to immigration and citizenship consultants, and that it should anchor any profession-related legislation. **Hence, we request that the Act be amended to include and describe, in detail, such a privilege for the client, who should have equal rights when using the services of any authorized representative.**

Lastly, immigration and citizenship consultants offer access to justice at a much more affordable rate than that of other authorized representatives, making solicitor-client privilege all the more vital for their clients.

## By-laws and Regulations

**80.** The Act is too broad on this topic and details are sorely lacking. It is stated that the College (mainly the Board of Directors) makes the by-laws, which are then either confirmed and/or ratified, yet there is no explanation regarding the limitations of the College’s authority in accordance with such by-laws. The point is moot if the regulations will eventually clarify such authority. If not, a consumer protection-oriented section within the by-laws must be included.

There is also a concern that the regulator could draft by-laws without respecting the regulations (e.g. elements outside their mandate and business dealings, which should be precluded from consideration). We experienced this in the past. For example, the regulator previously ran “specializations,” but these were technically education programs for RCICs; something similar this time would put the regulation at stake.

We request a parallel system: the regulator sets the rules, then gives the mandate to a third-party school that possesses the requisite standards to teach consultants and students, audit them, etc. The regulator tried to do this in-house once, but it created a conflict. In short, the regulator must: regulate; discipline; make annual audits on third-party providers; go to premises to investigate if necessary; and take care of members according to their mandate.

While we understand that the by-laws will be reviewed to confirm that they are consistent with the authority granted by the Act, the scope of the authority, its various permutations, and general details surrounding the process remain unclear.

## Tiered Licensing

**85.** (7)(k)(i) EOI is a pre-application process that precedes an application for permanent residence, not a study-related process for which RISIAs are qualified. RISIAs are currently neither trained nor tested in the former practice area and should therefore not be allowed to perform any work related to it, otherwise the consumer is put at risk; moreover, due to their limited role, RISIAs pay half the fee that consultants do. The Act would move them from under-registered persons to persons holding a classified licence.

**In the interest of consumer protection, we recommend that the scope of RISIA practice remains as is and advise against a tiered service. Otherwise, it is a slippery slope.**

Alternatively, an increase in the requirements and membership fee to align with the extra authority/scope is necessary. Any representative who deals with Express Entry applications should take the requisite course to become a citizenship and immigration consultant with the College.

The relevant sections in the Act should be amended to reflect current ICCRC regulations pertaining to RISIAs, provided below:

### 6. SCOPE OF PRACTICE

- 6.1 A RISIA shall provide immigration advice only in the area of Study Permits, Temporary Resident Visas, and how Study Permits relate to other currently available Canadian immigration programs.
- 6.2 A RISIA shall not provide representation in immigration matters to any Student.
- 6.3 A RISIA shall not fill out any immigration forms for any Student.
- 6.4 A RISIA shall refer any Student needing representation or immigration forms to be filled out to a RCIC or other Authorized Representative to do so under Section 91 of IRPA

(7)(k)(ii) This subsection contemplates a possible change in eligibility requirements, post by-laws. However, a grandfathering clause and criteria have yet to be determined. The Act should clearly describe both.

## Decision of Registrar

**38.** There **should be an internal appeal process for fairness**, otherwise there will be many avoidable and costly Federal Court challenges that will complicate the process and may lead to a backlog, their invocation of unquestionable authority notwithstanding.

## Conclusion

There is a strong rationale for maintaining the Act's self-regulatory elements, as the current regulator has made significant improvements, forcefully addressing the CIMM Report's identification of relevant shortcomings. This applies especially to the explicit powers given to the minister to carry out necessary changes, thereby ensuring public protection. One glaring omission from the Act is the protection of privileged client information.

We thank the Government of Canada and Parliament and strongly support their move to enhance consumer protection under federal statute within the immigration industry,



which will effect unprecedented, positive change. We look forward to the curtailment of the activities of unauthorized practitioners and to see progress, in the form of better safeguards and increased authority, unfold. We respectfully request that the Act be passed into law shortly and thank the Senate Committee for its actions toward improving consumer protection.