



Administrative Penalties: proposed regulations

CCR comments, 29 January 2025

The following are the comments of the Canadian Council for Refugees (CCR) in response to the publication in the Canada Gazette, Part I, Volume 158, Number 51, on December 21, 2024, of proposed amendments to the [Immigration and Refugee Protection Regulations](#) and to the [Citizenship Regulations](#) with respect to administrative penalties for non-compliance with requirements regarding representation and advice.

The proposed regulations follow on amendments made in 2019 to the *Immigration and Refugee Protection Act* (IRPA) and to the *Citizenship Act* to allow the establishment by regulation of an administrative penalties and consequences regime.

The proposed regulations implement the same regime for both Acts and rely on the same Regulatory Impact Analysis Statement. We are therefore submitting a single set of comments on both sets of regulatory proposals.

1. Impact of unscrupulous and incompetent agents

CCR members regularly witness in the course of their work the devastating impact of unscrupulous and unauthorized consultants on the lives of people seeking to navigate Canada's immigration and citizenship systems.

While we also hear many complaints about lawyers and registered consultants in Canada, the major gap that the proposed regulations need to address is for agents who are outside Canada as well as those in Canada who are unregistered.

Unregulated agents take money – often considerable sums of money – from people and then may provide false or misleading advice, incompetent services or no services at all.

Many of those affected enter Canada as Temporary Foreign Workers (TFWs) or as international students having received false information about the nature of their rights and opportunities from such agents. Illegal recruitment fees being paid by TFWs are also widespread. Workers are sometimes charged huge sums for fees allegedly related to the Labour Market Impact Assessment, which are costs that should be borne only by employers.

Other individuals have been encouraged to enter Canada on a tourist visa, based on the agent's false promises of a job and proper documentation to be issued after arrival in Canada.

Others affected are already in Canada. They are seeking to extend their stay, obtain a work permit, obtain permanent residence or regularize their status. Many do not have access to legal aid and cannot afford to pay a lawyer or registered immigration consultant. Yet they have compelling reasons for attempting to remain in Canada and may face significant hardships if they are forced to leave. They are regularly preyed on by individuals that falsely promise them solutions. In many cases, those affected end up being removed from Canada – this creates an often unsurmountable barrier to filing a complaint, thus shielding ghost consultants from accountability and allowing them to continue to prey on others with impunity.

We therefore support IRCC's goal of creating a mechanism of accountability for these agents.

2. IRCC responsibility for conditions favouring unauthorized agents

At the same time, we underline that IRCC bears significant responsibility for the conditions that favour the explosion of unscrupulous and exploitative services offered by unauthorized agents. These circumstances include:

- Inaccessibility and unreliability of IRCC services, including lack of responses to questions that applicants have, causing desperation among those who are unable to understand how the rules apply to them, or have no way to correct an error made by IRCC, or to advance processing when their application seems to have been forgotten.
- Excessively long processing times that cause injustices for the applicants.
- Complicated or restrictive immigration policies that leave many people falling through the cracks.
- Retroactive immigration policies that change the terms that were offered at time of arrival, leaving many people desperate and vulnerable to exploitation, as happened this past year with international students.
- Lack of access to legal aid or affordable qualified services.
- The failure of the government to implement a broad and accessible regularization program, leaving countless people with no clear avenue forward.

In addition to developing mechanisms of accountability for unauthorized agents, IRCC should study and address the ways in which its policies and practices push people into the hands of unscrupulous agents.

3. Need for communication that NGO employees are not providing services “for consideration” per revised interpretation of s. 91

IRCC’s recent clarification, made in a [letter to the CCR in October 2024](#), that paid employees of NGOs are not prohibited from providing services under section 91 of the Immigration and Refugee Protection Act is timely given that the proposed regime of administrative penalties would otherwise raise serious concerns about the possibility of NGOs being subject to the penalties.

We note that the measures in the proposed regulations address advice or representation given “for consideration”. The Minister clarified in his letter to the CCR “that IRCC has adopted an interpretation of “consideration” that excludes instances of advice or representation provided to clients by salaried non-governmental organization (NGO) staff where there is no direct or indirect payment for the services by the client”. Therefore, the new regime does not apply to free services offered by NGOs.

However, the publication of the proposed regulatory amendments reinforces the need for a clear public statement from IRCC on its website, and through other communication channels, about the revised interpretation of Section 91 in relation to NGOs and not-for-fee service support.

4. Protections needed against bogus complaints intended to harass

We are concerned about the low legal threshold in the proposed regulations for the launching of an “inspection”.

Under the proposed regulations, an officer may conduct an “inspection” if the officer “has reasonable grounds to suspect that a person has committed a violation” (315.49 (1) for IRPA; 38 (1) for Citizenship Act). A person who is subject to an inspection may be required to provide documents within a specified time period and faces a significant financial penalty of \$10,000 if they fail to comply.

Depending on the documents required by the officer, their production could be onerous and time-consuming, especially if it involves multiple files and data stored in different formats (such as paper, electronic files, email exchanges and bank records). There may likely also be confidentiality concerns, potentially requiring consultation on legal obligations and communication with clients whose personal information would be disclosed.

“Reasonable grounds to suspect” is a low standard. Our concern is reinforced by the Regulatory Impact Analysis Statement (RIAS) according to which IRCC will be conducting inspections “based on a reason to suspect non-compliance on client immigration and citizenship applications, such as a complaint or an anonymous tip.” Complaints and anonymous tips are the only examples given of potential reasons to suspect non-compliance.

Those working in the field are aware that people may have various motives for denouncing another person, not all related to a potential failure by the person complained against to comply with the law. Disgruntled clients occasionally make false accusations. Personal or professional disputes can result in unfounded allegations. The risk is particularly great when complaints can be made anonymously.

Even though the revised and correct interpretation of s. 91 means that NGO workers should not be liable under this regime, they are not protected against “inspections” based, for example, on a malicious and false anonymous tip claiming that they had taken money for a service.

To reduce the burden on an individual of an “inspection” triggered by a malicious or completely unfounded complaint, we recommend that an additional step be added where IRCC gives the person suspected of a violation an opportunity to provide a written response before an inspection is launched. This preliminary stage exists in some other complaints processes. It would allow officers to quickly set the matter aside in cases where the person provides a satisfactory response and the officer no longer has a reasonable ground to suspect that there has been a violation.

5. Providing safe avenues for complaints by those who have been exploited

The RIAS gives no consideration to the barriers to making complaints faced by those who have been exploited by unauthorized agents, and the need to address those barriers.

It is well-known in the sector that people with precarious status are usually very reluctant to complain. This is particularly the case for the most vulnerable (CCR addressed this issue recently with respect to complaints about CBSA in our Submissions on Bill C-20 (CBSA oversight) - <https://ccrweb.ca/en/submission-c20-cbsa-oversight>).

NGOs can support individuals in making complaints or make complaints themselves. As mentioned above, CCR regularly hears from its members that they are aware that people they serve are relying on unauthorized agents.

But NGOs themselves are also often hesitant about making complaints. One reason for NGOs’ reluctance to pursue complaints against ghost consultants is a fear of retaliation, including the possibility of incurring legal liability.

We are thus concerned that IRCC may be opening the door wide to unfounded complaints made by unscrupulous individuals, leading to harassment of those who are working conscientiously, while those guilty of the worst abuses may fly under the radar because they successfully intimidate those on whom they prey.

We urge the government to consider carefully how to facilitate complaints from those who have suffered from violations. This would include clear and simple ways to make a complaint, transparency about the process and about what information will be shared and with whom, protections against retaliation, and opportunities to ask questions.

The government should consider how to reassure potential complainants about protection from possible consequences they may fear for reporting on agents. This includes concerns about lack of confidentiality and fears that a current or future immigration application may be negatively affected because of the information shared about the agent. People may fear, for example, that if IRCC learns that the application was made with the support of an unauthorized practitioner, the application will be rejected. IRCC should therefore communicate clearly how information about the complaint will be shared within IRCC (and to CBSA), potential impacts on applications and what opportunities there will be to update a pending application with new information.

The government should also consider providing a remedy for people who have suffered serious harms. IRCC already recognizes the need for temporary measures to address the situation of victims of trafficking or of abuses in the workplace (Temporary Resident Permits for victims of human trafficking and Open work permits for vulnerable foreign workers who are victims of abuse). In the same way, a temporary status offered to a person abused by an agent would allow them to recover financially, seek justice against the agent and consider their immigration options. Currently, without any remedy, many who have suffered the most from unscrupulous agents are left with precarious or no status in Canada, and may face deportation.

The government could also consider waiving application fees for individuals who need to make a new immigration application after a previous one has failed as a result of an agent who committed a violation.

If remedies were available to victims of unscrupulous agents and their energies were not fully taken up with addressing their precarious situation, they would be better able to pursue a complaint against the agent.

6. Need for clear information about different mechanisms

The proposed administrative penalties regime applies not only to unauthorized agents, but also to registered consultants and lawyers, whose conduct is overseen by their respective regulatory body.

This will raise questions among people about where they should take their complaints about registered consultants and lawyers, and whether there is value in complaining to IRCC as well as to the regulatory body. It will be important to have clear communication to avoid confusion.

We also note that the multiple oversight measures may make it more challenging for people to check the status of an agent if they are considering using their services. They may need to check

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at least two of: the provincial bar association's register, the College of Consultants' register and the IRCC registry. In some cases, it might also be relevant to check provincial registries of uncompliant practitioners under provincial labour laws.

As far as possible, IRCC should facilitate access to all relevant information in a single location, or at least offer clear communication about the various registries.