January 29, 2025

Via email: Minister@cic.gc.ca, harpreet.kochhar@cic.gc.ca, IRCC.APC-SCA.IRCC@cic.gc.ca

The Honourable Marc Miller, P.C., M.P.
Minister of Immigration, Refugees and Citizenship
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dr. Harpreet S. Kochhar
Deputy Minister of Immigration, Refugees and Citizenship
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L

RE: Canada Gazette, Part I, Volume 158, Number 51: Regulations Amending the Immigration and Refugee Protection Regulations and the Citizenship Regulations (Administrative Penalties and Consequences) Published on December 21, 2024

Dear Minister Miller and Dr. Kochhar,

The Canadian Immigration Lawyers Association ("CILA") opposes the proposed *Regulations Amending The Immigration and Refugee Protection Regulations* **and** the *Citizenship Regulations (Administrative Penalties and Consequences)*. CILA requests that Immigration, Refugees and Citizenship Canada ("IRCC") exclude lawyers from the Administrative Penalties and Consequences ("APC") regime. IRCC and the Department of Justice ("DOJ") must understand that legal disputes will arise if lawyers are included within the scope of the APC regime. Moreover, this January 24, 2025 letter to the IRCC and DOJ ministers shows the APC regime is vulnerable to Constitutional challenge.

CILA represents over 540 immigration lawyers, law students, and articling students across Canada. CILA's mission is to promote a stronger immigration system that advances Canada's policy objectives and protects the legal rights of newcomers to Canada. CILA has delivered expert testimony on immigration law before the House of Commons' Standing Committee on Citizenship and Immigration and the Senate of Canada's Standing Committee on Social Affairs, Science, and Technology.

IRCC has failed to provide any justification, evidence, or advanced notice on why it now feels the need to include immigration lawyers in the APC regime. IRCC's *Forward Regulatory Plan: 2024-2026* references a June 2017 CIMM Committee Report and April 2019 statement by the IRCC Minister to provide a rationale for the APC regime. The scope of both references are immigration consultants, with no mention of immigration lawyers. The CIMM report is entitled *Starting Again: Improving Government Oversight of Immigration Consultants.* In the

April 2019 statement, the IRCC Minister is quoted as saying: "Our government is taking decisive action to hold immigration and citizenship consultants to a much higher standard as we do with other professions, such as lawyers and doctors. By introducing new legislation, we are going to protect Canadians, prospective newcomers and good-standing immigration and citizenship consultants against the fraudulent consultants who are preying on the most vulnerable."

Moreover, IRCC has not conducted meaningful and substantive consultations since indicating in 2019 it would introduce the APC regime, despite its obligation to consult under the Treasury Board of Canada's ("TBS") *Cabinet Directive on Regulation*. The evidence shows IRCC only consulted with one organization representing lawyers even though the department had over five years to consult with affected parties. For example, after IRCC confirmed the APC regime would apply to lawyers, CILA had three meeting requests on the APC regime denied by IRCC in 2024.

IRCC has also grossly misrepresented the views of the only lawyer group it consulted. When the notice for the APC regime was posted on *The Canada Gazette* on December 21, 2024, IRCC claimed "The Federation of Canadian Law Societies ["FLCS"] was consulted in August 2024 regarding the high-level concepts of the proposed APC regime and did not register any concerns." This is false, as demonstrated by the FLCS' letter to you on December 22, 2024 stating "…the government of Canada has misrepresented the position of the Federation of Law Societies of Canada on an issue of great importance for its members, and stakeholders…This statement is patently incorrect, and deeply misleading." Despite the FLCS' request for IRCC to retract the statement from *The Canada Gazette*, the statement has remained unchanged on *The Canada Gazette* throughout the APC regime's 45-day consultation period. CILA is also incredulous about IRCC's gross mischaracterization given the FLCS' written submission dated August 26, 2019 unequivocally raises numerous concerns with the APC regime.

The following submission outlines the reasons CILA opposes the inclusion of lawyers and underscores the need for a more targeted, justified, and evidence-based approach. While the APC regime seeks to address unauthorized representation and fraud in Canada's immigration and citizenship system, its scope and application to lawyers who are already heavily regulated by provincial and territorial law societies is problematic, seriously flawed, and unsupported by evidence.

APC Regime is a Threat to Constitutional Principles and the Independence of the Bar

1. The proposed APC regime is not only redundant but poses a direct threat to the constitutional and structural foundations of Canada's justice system. It risks exceeding federal jurisdiction over immigration and citizenship and intrudes upon the provincial authority to regulate the legal profession, as established in *Law Society of British Columbia v. Mangat*, [2001] 3 S.C.R. 113. Federal jurisdiction under *Mangat* over legal representation in immigration is explicitly limited to representation before federal tribunals, while the regulation of the legal profession lies firmly within provincial jurisdiction. By introducing a parallel administrative enforcement mechanism, the APC regime oversteps these boundaries, creating an unconstitutional overlap with provincial jurisdiction.

2. Moreover, these measures violate the unwritten constitutional principle of the independence of the bar. The self-regulation of lawyers is not a procedural nicety—it is a constitutional necessity that ensures lawyers can represent their clients without fear of reprisal or external interference. As the Supreme Court of Canada emphasized in *Canada (Attorney General) v. Law Society of B.C.*, [1982] 2 S.C.R. 307, the independence of the legal profession is essential to maintaining the rule of law and public confidence in the justice system. The APC regime would create a parallel regulatory process for lawyers that the legal profession itself does not oversee and govern. It would undermine the autonomy of the legal profession.

3. IRCC has an insoluble conflict of interest under the APC regime, which heightens the threat posed by the regime to the independence of the bar and violates the *Canadian Bill of Rights*, which guarantees the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligation (section 2(e)). A fundamental principle of procedural fairness is that no one can be a judge in his own cause. But lawyers often stand in adversarial positions against IRCC, especially in legal proceedings before the Immigration and Refugee Board and the Federal Court. If the APC regime is adopted, IRCC would also regulate lawyers, and would assess the conduct of lawyers in proceedings against the IRCC. The *Canadian Bill of Rights* forbids such an arrangement.

4. This conflict of interest not only undermines the autonomy of the profession but also fundamentally unfair to clients. It jeopardizes the fairness of proceedings in which IRCC itself is a party. Including lawyers in the APC regime will significantly hinder a lawyer's ability to properly represent their clients, as lawyers will constantly fear that IRCC will question their actions in a case and then impose AMPs against them for zealous advocacy.

5. The APC regime also fails the test of necessity. Provincial law societies already provide mechanisms to investigate and adjudicate professional misconduct, supported by extensive jurisprudence and institutional expertise. These systems include safeguards such as disciplinary tribunals, specialized investigators, and oversight through judicial review. The introduction of a federal parallel system is duplicative, unwarranted, and constitutionally suspect. IRCC has not demonstrated any gap in the current regulatory framework that justifies this unprecedented intrusion into provincial jurisdiction.

6. This regulatory overreach fundamentally undermines public trust in the justice system by eroding the independence of the legal profession and imposing redundant enforcement mechanisms without clear purpose or necessity. If implemented, the APC regime would establish a dangerous precedent of federal encroachment into areas of provincial authority and professional self-governance. To safeguard Canada's justice system and uphold the rule of law, the government must exempt lawyers from the application of the proposed regulations. Regulatory initiatives must prioritize respect for constitutional principles and preserve the independence of the bar, a cornerstone of democracy and the rule of law.

IRCC Already Possesses Tools to Sanction Wrongdoers

7. The Regulatory Impact Analysis Statement "RIAS") claims that "there are no tools for IRCC to sanction individuals who commit these kinds of infractions." This assertion is misleading and ignores the legal framework already in place under the *Immigration and Refugee Protection Act* ("IRPA"). Provisions such as sections 91, 117 to 131 of the IRPA address a wide range of infractions, including human smuggling, trafficking, misrepresentation, document fraud, and obstruction of immigration officers. These provisions impose significant penalties, including fines, imprisonment, and bans, effectively targeting unauthorized actors and fraudulent activities.

8. Section 91 of the IRPA makes it a criminal offense for unauthorized individuals to provide representation or advice for remuneration in immigration or citizenship matters. Section 117 criminalizes organizing illegal entry into Canada, while sections 126 and 127 specifically address counseling and committing misrepresentation. Sections 122 and 123 penalize document fraud, and sections 118 and 119 combat human trafficking and illegal disembarkation at sea. Additionally, section 131 criminalizes inducing or aiding others to commit these infractions.

9. These existing tools demonstrate that IRCC has the necessary mechanisms to sanction misconduct, penalize wrongdoers and uphold the integrity of Canada's immigration system.

10. Against this background, the APC regime attempts to address gaps that do not exist. It appears designed to lower the procedural and evidentiary thresholds required for enforcement actions, shifting focus away from the safeguards embedded in the current legal framework. While framed as a measure to enhance accountability, the regime prioritizes administrative expediency at the expense of fairness and due process. By introducing redundant measures, it adds bureaucratic complexity, diverts resources from enforcing existing laws, and undermines trust in the immigration system. This disconnect between the RIAS's stated objectives and the realities of the APC regime evidences its flawed foundation, rendering it an unnecessary and counterproductive approach to addressing systemic challenges.

Unjustified Inclusion of Already-Well-Regulated Lawyers

11. Provincial and territorial law societies effectively regulate lawyers, by establishing stringent standards of practice, ethical requirements, and disciplinary processes. These organizations, whose origins date back to the establishment of the Law Society of Upper Canada in 1797, have created a centuries-long history of self-regulation that has ensured the profession's independence, reinforced public trust in its accountability, and provided an effective mechanism of discipline. As the RIAS itself states, "Authorized practitioners receive specialized training and are effectively regulated, meaning that they are held to a high standard of practice and there are options for complaints and potential recourse through their professional regulators should they not meet those standards." Disciplinary outcomes may include fines, suspensions, and disbarments. These penalties can be severe and career-altering.

12. Although acknowledging this well-established ecosystem of lawyer oversight, the RIAS then suggests that "despite existing professional discipline measures and criminal penalties, clients continue to face issues like fraud in applications and documents," without providing any evidence implicating licensed lawyers in widespread misconduct. This leap in the narrative conflates issues related to unregulated service providers with those already addressed by a stringent system of lawyer regulation, creating confusion. We see no credible evidence that law societies have failed to address or deter misconduct within the legal profession. By including lawyers in the APC regime, the proposed regulations blur the distinction between two very different categories of service providers: unregulated individuals with no legal authority to practice and federally licensed immigration consultants, and provincially licensed immigration lawyers already subject to a comprehensive and effective disciplinary system.

13. This disconnect undermines the narrative that additional, administratively imposed sanctions are necessary and risks diverting resources away from addressing the real issue. By conflating unregulated actors with licensed professionals, the proposed regulations create the illusion that law societies are failing in their mandate, which in turn risks eroding public trust in an already effective regulatory system. The APC regime should focus on unauthorized actors, the true source of harm to clients, and strengthening regulation of licensed consultants, rather than imposing redundant oversight on lawyers who are already rigorously regulated, monitored, and disciplined by law societies. Targeting the wrong group will fail to resolve the problem but also weakens confidence in the profession's long-standing and proven self-regulatory framework.

Objectives

14. The stated objectives of the proposed APC regime—to enhance accountability, prevent misrepresentation, and protect clients—fail to provide a coherent rationale for the inclusion of immigration lawyers. These objectives are undermined by their misalignment with the realities of professional regulation. Lawyers are already subject to:

- Strict ethical and legal boundaries set by law societies.
- Comprehensive complaint and disciplinary mechanisms that effectively address misconduct.
- High professional standards that prohibit misrepresentation, fraud, and unauthorized practice.
- Victim compensation funds and regular audits by law societies.
- The requirement to pursue undergraduate education and three- to four-year law degrees. It is competitive to gain entry to law schools and law students must regularly complete rigorous examinations. Law students must then go through the competitive process of gaining articling positions. They then need to pass a bar exam, and after they become licensed, they must constantly undertake Continuing Professional Development programming.

15. The inclusion of lawyers in a framework designed to address fraud and misrepresentation creates the false impression that systemic issues exist within the regulated legal profession. This unfounded implication not only misleads the public but also undermines confidence in law societies.

16. The objectives fail to justify why resources should be diverted toward scrutinizing licensed lawyers when no evidence suggests they are contributing significantly to the issues the regime seeks to resolve.

17. Additionally, the proposed measures dilute the focus of the APC regime by conflating the activities of unauthorized actors with the regulated practices of licensed professionals. Individuals operating outside legal or professional accountability frameworks, as well as those whose regulatory oversight may lack sufficient rigor, are the primary source of fraudulent and harmful practices in the immigration system. By failing to prioritize enforcement against these actors, the APC regime weakens its ability to achieve its stated objectives.

The Government of Canada Did Not Hold Meaningful Consultations

18. We submit that meaningful consultations were not carried out or properly conducted to address the implications of the proposed regime. The RIAS references consultations with CBSA, RCMP, and the FLSC, but these appear superficial and fail to meet the standard of genuine stakeholder engagement required for a regulatory change of this magnitude:

- CBSA and RCMP as Non-Stakeholders: The inclusion of CBSA and RCMP in the consultation process reflects interdepartmental discussions rather than engagement with true stakeholders impacted by the proposed regulations. To present their participation as meaningful consultation mischaracterizes the feedback process. These agencies, focused on criminal enforcement, cannot address the practical implications of the APC regime for regulated professionals or the clients affected by decisions under this framework. This misrepresentation raises serious doubts about the depth of stakeholder engagement.
- Superficial FLSC Engagement: The reference to FLSC's involvement through "high-level concepts" suggests a perfunctory engagement rather than a detailed or meaningful consultation. The absence of substantive engagement with the FLSC disregards its expertise in regulating legal professionals and its prior concerns about subjecting lawyers to duplicative enforcement tracks.

19. Past submissions by the FLSC in this same context have raised serious concerns about creating parallel frameworks that conflict with or undermine law society authority. By failing to acknowledge these concerns, the RIAS misrepresents the feedback provided and creates the illusion of meaningful engagement where none appears to have occurred.

20. From our perspective, no meaningful consultations were conducted. Key stakeholders directly impacted by these regulatory amendments—lawyer associations, provincial law societies, regulated lawyers, legal insurance providers (e.g., LawPro in Ontario), and clients—were entirely excluded from the process.

Allegations under the Proposed Regulations Prejudges Culpability

Notice of Preliminary Findings: Prejudging Liability

21. The proposed Notice of Preliminary Findings ("NOPF") section in the regulations appears to prejudge liability by implying that an individual "has committed a violation" before liability is formally established. By shifting the process to a "right to submit information" to refute an officer's suspicions, the framework places lawyers in a defensive posture from the outset. This is contrary to the principle that investigations should begin with an open mind. Any system that signals a presumption of culpability impinges on fairness and procedural rights, particularly for lawyers who must also uphold solicitor-client privilege and confidentiality in presenting their defense.

22. The NOPF framework further conflicts with lawyers' professional duty of loyalty, which requires them to act in their clients' best interests and maintain confidentiality at all times. Unlike other regulated professionals, lawyers are bound by ethical and legal obligations that prevent them from prioritizing their own defense at the expense of their clients. The framework, however, implicitly pressures lawyers to "throw their clients under the bus" by disclosing confidential client information or actions in an attempt to shield themselves from liability. Such a conflict is untenable and fundamentally incompatible with the ethical duties lawyers must uphold, particularly the solicitor-client relationship.

23. Moreover, the presumption embedded in the NOPF process undermines procedural fairness by shifting the burden onto lawyers to disprove allegations rather than requiring allegations to be proven through an impartial investigation. A process that begins with a conclusion—or strongly implies one—not only compromises fairness but also places lawyers in a position where defending themselves may conflict with their duty of loyalty. This structure risks eroding both procedural rights and the integrity of the legal profession.

Notice of Violations

24. The Notice of Violations ("NOV") process takes the concerns about the NOPF even further. It vests an IRCC officer with the authority to finalize a finding of liability "on a balance of probabilities," without clear assurances of impartial review prior to issuing the NOV. Relying on one individual's discretion risks:

- Inconsistency in decision-making across different officers.
- Insufficient transparency on how evidence is weighed.
- The expansion of administrative authority without checks.

25. Where oversight mechanisms exist, they are primarily reactive, relying on a vague review process or ultimately judicial review after penalties have already been imposed. This lack of proactive oversight during the decision-making stage undermines fairness and increases the potential for error or overreach. The process will disproportionately burden already-regulated lawyers, who may find themselves defending

against concurrent law society investigations and APC penalties for the same alleged conduct. This overlap creates significant administrative challenges and increases the risk of conflicting outcomes.

26. The inherent conflict between these regulations and lawyers' ethical obligations jeopardizes their ability to provide effective representation while maintaining public trust in the legal system. Under two conflicting regimes—one imposing duplicative and incompatible demands and the other requiring adherence to strict professional and ethical standards—lawyers simply cannot function.

Speculative Cost Analysis

27. The cost-benefit analysis contains glaring omissions and speculative assumptions, failing to provide a complete or accurate picture of the APC regime's financial implications:

- We note that the costs associated with Governor in Council appointees, including their salaries, training, and operational support are entirely absent from the cost analysis. This omission begs the question: if the system becomes overwhelmed, how will these additional demands be addressed?
- The RIAS acknowledges that penalties may be difficult to collect from offenders outside Canada. This implies that international violators will remain unaffected, while enforcement disproportionately targets regulated professionals within Canada.
- The analysis fails to distinguish between the costs of addressing unregulated actors and lawyers. This lack of differentiation forces taxpayers to subsidize an oversight scheme that duplicates existing systems, with no demonstrated benefit to these professions or the public.

28. The result is an unclear, potentially inflated cost to the government, while the regime's benefits remain unsubstantiated for the legal profession.

29. Moreover, While the RIAS suggests that the APC regime is a cost-effective enforcement tool, it relies heavily on the Federal Court as a key mechanism for resolving disputes. The need for individuals to apply for judicial review of APC decisions introduces significant potential for prolonged litigation. This reliance on the Federal Court not only undermines the purported cost savings but also imposes a substantial financial burden on taxpayers, who ultimately bear the cost of these proceedings. Such an approach is inconsistent with the objective of creating an efficient and accessible enforcement system and risks overburdening the Federal Court with matters better addressed through professional self-regulation.

Small Business Lens Fails to Address Administrative Burden

30. Most immigration lawyers are self-employed or part of small practices, with 99% of licensed practitioners classified as "small businesses" by RIAS. Despite this, RIAS claims there is no additional administrative or compliance burden, asserting that "[p]enalties are not considered to be administrative or compliance burden as defined in the Policy on Limiting Regulatory Burden on Business." While penalties themselves

may not qualify, this perspective ignores the extensive processes that lead to penalties, clearly constituting an administrative burden under the same policy.

31. The *Red Tape Reduction Act* defines administrative burden as "anything that is necessary to demonstrate compliance with a regulation, including the collecting, processing, reporting and retaining of information and the completing of forms." Under the APC regime, practitioners must respond to investigations, gather documentation, and address notices—activities that fall squarely within this definition.

32. Accordingly, RIAS's conclusion that penalties do not impose administrative burdens is misleading. The compliance process demands significant time, resources, and effort, imposing real costs beyond the penalties themselves. By mischaracterizing the regime solely on penalties, RIAS overlooks the broader regulatory burden on small businesses, undermining the accuracy of its cost analysis and the justification for the APC regime affecting already-regulated professionals.

33. Lawyers are required to carry indemnity insurance. The APC regime will inevitably drive-up insurance premiums, as insurers calculate risk at the group level rather than for individual practitioners. With the introduction of a penalty regime this costly, the risk associated with immigration law practices will likely become the most expensive within the profession. This increase will disproportionately impact compliant lawyers, forcing even those who never face allegations to bear the financial burden of a heightened group risk. For small practices, this added cost represents a substantial and unjustified strain on their operations.

34. It is unclear whether current insurance coverage that lawyers are mandated to have will cover APC penalties. In Ontario, the annual cost of professional liability insurance is approximately $2,000 per lawyer. The cost of additional insurance premiums may cause many lawyers to move to other areas of law leaving many vulnerable applicants unable to find competent and regulated representation, and instead will turn to unauthorized agents for help in completing applications and filing refugee claims. Accordingly, the result will be increasing the demand and use of unauthorized representatives which is the opposite of the intended purpose of the APC regime.

35. Lawyers who are on Legal Aid rosters are more likely to work with vulnerable clients and deal with more complex and higher risk cases. Under the *Legal Aid Services Rules* (in Ontario), a lawyer may be removed from the roster if they are sanctioned by IRCC, regardless of whether they have been found in breach of professional conduct by the Law Society of Ontario. This added risk may discourage lawyers from empaneling with Legal Aid and work against the APC regime's objective of public protection, particularly among the most vulnerable client groups who may not otherwise be able to access legal representation at all. Only licensed lawyers are eligible to be empaneled with Legal Aid.

The APC Regime Creates significant Access to Justice Issues

36. We further submit that these costs could drive lawyers out of business or force them to raise fees, directly impacting access to justice and competent legal representation. Those who cannot afford higher fees will

be left without access to regulated professionals, undermining the very purpose of the APC regime and harming the most vulnerable clients it is intended to protect.

37. Beyond financial strain, the proposed legislation introduces a chilling effect that discourages lawyers from taking on complex or high-risk cases. The proposed legislation will have a direct impact on access to justice, as lawyers will be unwilling, or unable to take on files that have any allegations of misrepresentation, leaving a client in the vulnerable position of being self-represented while trying to defend allegations being made by IRCC, whether or not they have any foundation. While this would certainly benefit IRCC, who would likely not see many of their allegations challenged by a self-represented person; this would not be in the best interest of the public who need to have free access to legal counsel who can assist them in ensuring that justice is served in their case.

38. Immigration lawyers should not be required to second guess whether to take on certain cases merely because there is a potential that they may become a target of APCs. The impact could cover a broad range of cases, including but not limited to refugee claims, Humanitarian & Compassionate ("H&C") applications, family class applications, and temporary visa applications. For example, lawyers may decide to turn away meritorious claims from non-refugee producing countries because the perception is that there are not typically refugee claims made against those countries, and therefore, there would be a higher risk of being exposed to APCs. Similarly, in cases involving procedural fairness letters alleging misrepresentation, lawyers may hesitate to represent clients for fear of penalties.

39. A lawyer may also consider filing an H&C application for elderly parents of permanent residents because there is no parent sponsorship category available, and the parents may be in Canada and no longer have the ability to travel home due to health or other reasons. If the parents are established in Canada, and there is no alternative route for them to permanently remain with their family members, there is potential merit to the application. However, IRCC could come to the conclusion that there was no merit to the application and impose an APC against the lawyer for simply agreeing to represent the client in their case. Similarly, a lawyer may be reluctant to take on a family class spousal application because of the risk that it might be labeled as a fraudulent relationship by IRCC, again drawing the potential for AMPs to be imposed against them.

40. The APC regime, while claiming to enhance accountability and protect vulnerable clients, risks creating outcomes that are the exact opposite of its stated goals. By discouraging legal advocacy, increasing financial barriers, and disincentivizing the defense of complex claims, the APC regime jeopardizes the integrity of Canada's immigration system. It not only deters lawyers from representing clients in cases that require rigorous advocacy but also diminishes public confidence in the immigration system's fairness. By targeting already-regulated professionals, the regime introduces unnecessary complexities that harm both clients and practitioners, failing entirely to foster accountability or client protection.

Erroneous Regulatory Cooperation Analysis

41. The RIAS concludes that alignment with existing frameworks is "not feasible" without any exploration of coordination with law societies. This conclusion is unfounded. Law societies have long-standing disciplinary authority, comprehensive codes of conduct, and investigative processes. It would be straightforward to limit the APC regime to unregulated actors and licensed immigration consultants while continuing to rely on law society enforcement to handle complaints against licensed lawyers. A refusal to pursue this cooperative strategy implies a preference for duplicative regulation, contradicting the government's stated objective of regulatory efficiency.

42. Second, the rationale dismissing international alignment is equally erroneous. While IRCC asserts that the regime targets individuals providing advice based on federal laws, it fails to address how unauthorized actors abroad—the most significant offenders undermining the immigration system—will be effectively sanctioned. By ignoring international cooperation entirely, the department leaves a glaring gap in enforcement, where ghost consultants operating outside Canada can continue their harmful practices with impunity.

43. Accordingly, the APC regime further misallocates enforcement resources. Targeting licensed professionals, who are easy to identify, diverts attention and capacity away from addressing the real sources of harm: unauthorized actors and ghost consultants, particularly those operating abroad. This misdirected effort not only fails to tackle the root of the problem but also creates the illusion of action while leaving vulnerable clients exposed to the predatory practices of unregulated individuals. The refusal to focus enforcement on these actors undermines the regime's credibility and contradicts its stated objectives of protecting the integrity of Canada's immigration system.

GBA+ Analysis Does Not Address Vulnerable Populations

We submit that the GBA+ Analysis is significantly deficient for the following reasons:

44. First, the RIAS states: "Furthermore, it was determined that these Regulations are not expected to negatively impact any group of persons disproportionately on the basis of identity factors such as gender, race, ethnicity, sexuality, religion, and age. During consultations with stakeholders, no concerns were raised about disproportionate negative impacts to specific groups." However, the listed stakeholders—CBSA, RCMP, the Federation of Law Societies, and the College of Immigration and Citizenship Consultants ("CICC")—are not equipped to meaningfully assess these issues.

45. The CBSA and RCMP lack the expertise or mandate to analyze the potential impacts of the APC regime on vulnerable populations, as their scope of work is limited to enforcement and criminal investigations. Similarly, while the FLSC and the CICC represent their members, their engagement was focused on regulatory impacts affecting their respective professions rather than the broader implications for specific client groups. Moreover, the FLSC's consultation, as previously discussed, was mischaracterized as substantive when it was limited to high-level discussions. These limitations undermine the validity of the

RIAS' claim that no concerns were raised about disproportionate negative impacts, as the consulted parties were not positioned to identify or articulate such concerns.

46. Despite these gaps, the RIAS asserts that the APC regime will protect vulnerable clients but fails to provide specific data or evidence to support this conclusion. There is no indication that vulnerable populations, such as those facing language or cultural barriers, are at greater risk from regulated lawyers than from unauthorized representatives. This lack of evidence renders the claim speculative and unsubstantiated.

47. In practice, these regulations are likely to have the opposite effect. Lawyers who handle high-risk or complex cases often act as a critical lifeline for individuals from marginalized communities. However, the specter of large penalties under the APC regime may deter some practitioners from taking on vulnerable clients or aggressively advocating for them, particularly when such cases carry heightened risks of regulatory scrutiny.

48. We submit that the proposed regulations will create a chilling effect, discouraging lawyers from providing essential services to vulnerable populations who are most in need of skilled legal representation. This outcome runs directly counter to the stated goals of the APC regime and risks leaving those clients without access to the legal advocacy they rely on.

Disproportionate Risks for Lawyers

49. The proposed model threatens to undermine solicitor-client privilege. Solicitor-client privilege protects the communications of lawyers and their clients from disclosure, and is of fundamental importance to effective legal representation and the rule of law. Solicitor-client privilege prohibits lawyers from disclosing sensitive information in their defense unless narrowly justified by recognized exceptions. At every stage of the enforcement process – responses by lawyers to a Notice of Preliminary Finding and a Notice of Violation, and during a Review – IRCC may interpret the lawyer's inability to share information subject to solicitor-client privilege as suspicious, and draw an adverse inference that they are guilty of the alleged conduct. This dynamic can lead to unfounded allegations generating sanctions. Moreover, lawyers will be placed on the horns of a dilemma, between disclosing privileged information in order to defend themselves – with such disclosure having the effect of negating or waiving that privilege – and complying with their professional obligations to their clients. By contrast, regulatory enforcement by provincial law societies create no such dilemma, because they preserve solicitor-client privilege while requiring lawyers to disclose privileged materials in the course of conducting investigations. They are accordingly much better positioned than IRCC to regulate lawyers in the public interest.

50. Once the AMPs are imposed against them, in order to defend their reputation, a lawyer would then be required to put their own interests ahead of their client; creating a clear conflict of interest in the solicitor/client relationship.

51. Penalties that can reach $1.5 million—accompanied by mandatory public disclosure—can devastate the reputation of a lawyer who must also answer to a law society. Reputational harm is often irreversible, even if an accusation is eventually found to be unfounded.

52. The RIAS contradicts itself by characterizing administrative penalties as less onerous than court proceedings, yet simultaneously pointing to judicial review as the main recourse for fairness. Judicial reviews are expensive, time-consuming, and ill-suited to remedy the reputational fallout that occurs once public disclosure has happened.

Conclusion

53. Lawyers—who are already supervised by law societies, disciplined for misconduct, and ethically prohibited from acting against their clients' best interests—pose no demonstrated systemic risk that warrants a second layer of penalties and duplicative investigations under the proposed APC regime.

54. This submission underscores the many flaws in the current proposal: it lacks the evidence-based justification demanded by the TBS' *Cabinet Directive on Regulation*, overlooks existing sanctions under the IRPA, and does not recognize the rigorous accountability of law societies. Moreover, by imposing stringent penalties, a prejudicial procedure, and mandatory public disclosures on a profession already facing stringent regulation, IRCC jeopardizes not only the independence of the bar but also the public's access to legal services—especially for vulnerable clients and vigorous legal advocacy.

55. We call for a more focused approach that respects the proven capabilities of law societies to regulate and, where necessary, discipline licensed lawyers. An evidence-based strategy that carefully delineates responsibilities between IRCC and law societies will serve the public interest far more effectively than a duplicative, burdensome APC regime that undermines the carefully balanced regulatory framework governing Canada's legal profession. We request that the Government of Canada exempt lawyers from the application of the proposed regulations.

Sincerely,

Barbara Jo Caruso
Vance Langford
Co-Presidents

Appendix:

- January 24, 2025 Letter to IRCC and DOJ Ministers on APC Regime