



October 14, 2020

Law Society of British Columbia  
845 Cambie Street  
Vancouver, BC V6B 4Z9

Attention: Craig A.B. Ferris, QC, President

Dear President Ferris:

**Re: Code of Professional Conduct for British Columbia - Rules 6.1-5 and 6.1-6 (Electronic Registration of Documents)**

I write to you on behalf of the Canadian Bar Association, BC Branch Immigration Law Section to request clarification on the applicability of Rules 6.1-5 and 6.1-6 of *Code of Professional Conduct for British Columbia* ("BC Code") to immigration and citizenship lawyers in relation to federal government electronic application systems. If it is determined that these rules do apply to immigration and citizenship lawyers, we are writing to request an exemption as outlined below.

The BC Code s.6.1-5 and s.6.1-6 read:

**Electronic registration of documents**

**6.1-5** A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not

- (a) permit others, including a non-lawyer employee, to use such access; or
- (b) disclose his or her password or access phrase or number to others.

**6.1-6** When a non-lawyer employed by a lawyer has a personalized encrypted electronic access to any system for the electronic submission or registration of documents, the lawyer must ensure that the non-lawyer does not

- (a) permit others to use such access; or
- (b) disclose his or her password or access phrase or number to others.<sup>1</sup>

**Commentary**

[1] The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Statements professing compliance with law without registration of supporting

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<sup>1</sup> [https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/mm/BC-Code\\_2019-12.pdf](https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/mm/BC-Code_2019-12.pdf) - copy attached

documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

[2] In a real estate practice, when it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has such access, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the system.

The foregoing rule and commentary identical or nearly identical to the Model Code Rules of the Federation of Law Societies that most provinces and territories have.<sup>2</sup> However, two provinces have provisions that differ significantly: Ontario's rule is specific to the real estate context; it outlines requirements relating to the electronic registration of title documents.<sup>3</sup> Quebec's *Code of Professional Conduct of Lawyers* does not mention the electronic registration of documents.<sup>4</sup>

The BC Code, if it were strictly applied to immigration and citizenship lawyers, would impair and even devastate some practices because Immigration, Refugees and Citizenship Canada (IRCC) is gradually changing all immigration, employer compliance and citizenship applications and filings from paper to electronic processing, as are the courts and tribunals. Similarly, applications to other federal and provincial authorities, such as Service Canada and the BC Provincial Nominee Program (BC PNP), which enable employers to support immigration applications by current or intended employees, have or are in the process of moving to electronic submission.

Lawyers submit electronic applications to IRCC through their Authorized Paid Representatives Portal ("Representatives Portal") accounts. It is standard practice for an immigration lawyer to ask supervised staff, such as a legal assistant or paralegal, to access the lawyer's account in order to perform time-consuming administrative tasks including entering voluminous amounts of data such as addresses, dates of birth, passport numbers, work experience and travel history for 10 years or more, uploading supporting documents, and retrieving government communications. The lawyer reviews and verifies all information and documentation in the Representative Portal and then electronically signs a declaration when submitting the application. Lawyers may similarly delegate part of the process of preparing employer compliance filings, applications for nomination by the BC PNP and Labour Market Impact Assessments.

Prohibiting lawyers from delegating these types of purely administrative tasks, simply because they are completed through an online system is akin to prohibiting lawyers from using administrative staff to fill out paper forms or create drafts of any documents that are ultimately

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<sup>2</sup> Two provinces have rules which differ only slightly from the Model Code. In PEI, the rules and commentary are identical but the heading "Electronic Registration of Documents" is absent. In Alberta, Commentary [2] does not explicitly mention real estate, but the rules and commentary are otherwise identical.

<sup>3</sup> [https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/chapter-6#ch6\\_sec1-5-electronic-registration](https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/chapter-6#ch6_sec1-5-electronic-registration)

<sup>44</sup> <http://legisquebec.gouv.qc.ca/en/showdoc/cr/B-1,%20r.%203.1>

signed or submitted in the lawyer's name. To be clear, for many of these immigration applications, it is not possible to fill in the forms without logging in to the government's application system. Moreover, even for forms or other documents that can be completed offline and then uploaded into the system, the act of uploading documents is often very time consuming, and clearly, is not legal work that it should only be performed by a lawyer.

The CBA National Immigration Section has unsuccessfully made requests to IRCC for secondary administrative user accounts since 2013, not long after the Representatives Portal came online. However, the infrastructure for the Representatives Portal has severe limitations, which it will continue to have until the federal government invests heavily in a new IT infrastructure. Until then, changing or expanding any portal functionality is not possible.

The BC Code s.6.1-5 and s.6.1-6 causes the following harm to immigration and citizenship lawyers and their clients:

## **1) access to justice**

### **a. increase legal costs**

BC Code s.6.1-5 and s.6.1-6 hinders the legal services delivery models designed to manage the cost and affordability of immigration law firm services, utilizing assistants to handle administrative tasks. Requiring a lawyer to complete all work in the Representative Portal has an immediate and direct impact on the costs for legal services making legal representation unaffordable for most persons. For example, an application might cost \$7m000 in legal fees based on the assumption that the file requires 20% lawyer time and 80% assistant time. If BC Code s.6.1-5 and s.6.1-6 were read to strictly apply to immigration and citizenship lawyers, then the file would likely require 80% lawyer time and 20% assistant time. As a result of increased demands on a lawyer's time, the public and law firms must endure higher costs;

### **b. decrease legal services availability**

If a lawyer is required to spend an inordinate amount of time completing all of the administrative work in the Representative Portal, it will not only unnecessarily increase the legal fees, but it will also decrease the availability of lawyers to provide legal services to other applicants/clients.

### **c. decreased public protection**

The increase in legal fees by requiring lawyers to complete all administrative work in the Representative Portal will drive the public to seek inferior services offered by registered and unregistered consultants. The CBA Resolution 20-06-A "Protecting the Public from the Practice of Immigration Law by Immigration Consultants" urges the government to supervise and govern the conduct of

immigration consultants.<sup>5</sup> Despite the bar's grave concerns regarding immigration consultants, the BC Code inadvertently places lawyers at a severe operational disadvantage because consultants do not have barriers to using support staff in the Representative Portal as they are not governed by the BC Code.

## **2) increased complaints and insurance claims:**

### **A. likelihood of errors increases**

- i. Most immigration law firms have assistants enter information into the online forms with the lawyer confirming all entries to ensure there are no errors. Two sets of eyes, or more in some instances (some firms also have a second staff person review), significantly reduces potential errors in the online applications. Only permitting lawyers to access the Representative Portal (and the other portals referred to above) may increase the rate of errors, which can harm the public and the profession. Additionally, the Representatives Portal has information bubbles (with instructions on how to properly complete the application) accessible only when one is logged into a specific client's electronic application. The content of these bubbles changes frequently and assistants need immediate access to check their content regularly.
- ii. As background, while IRCC has not created limited user accounts in its Authorized Representatives Portal (i.e., read/write only, but not permitted to submit), the Portal does permit a user to enter data and upload document files that remain in the online application when the user logs out. A draft online application can be kept in the Portal for later edits or additions and ultimate submission. Thus, an assistant can efficiently add value in the preparation of a draft application file without submitting the final application.

### **B. delayed work/missed deadlines**

- i. There is also the issue of delay and potential for missed deadlines as a lawyer tries to complete all of the administrative work into their full schedules. Providing portal access to assistants and other supervising representatives ensures adequate coverage when the primary lawyer is unavailable. If lawyers are on vacation, leave or other absence, there is currently no practical way to transfer cases to another portal for a temporary period of time. Also, some applications are urgent and requiring a lawyer to complete all of the work in the Representative Portal threatens clients' interests.

### **C. delayed/missed communications**

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<sup>5</sup> [https://cba.org/CBAMediaLibrary/cba\\_na/SecurePDF/Annual-Meeting/Resolutions/2020/20-06-A.pdf](https://cba.org/CBAMediaLibrary/cba_na/SecurePDF/Annual-Meeting/Resolutions/2020/20-06-A.pdf) - copy attached

- i. Immigration applications submitted through the Representative Portal requires constant monitoring for government correspondence, which is typically issued only via the portal. Some high volume corporate clients may have hundreds of open cases at any given time. It is impractical and sometimes impossible for a single lawyer to monitor all open cases for one client. There is an increased risk of delay and missed deadlines for cases if staff are unable to check the portal for updates on a daily basis.
- ii. The increase in errors, missing of deadlines, and delay of processing noted above can all result in an increase in complaints to the Law Society of BC and lawyers' liability. Increased claims against the Lawyers Indemnity Fund will directly impact all lawyers in BC.
- i. **mental health and well-being:** The mental health of lawyers is of great concern to immigration and citizenship lawyers. There are often significant time constraints placed on lawyers when completing immigration applications in the Representative Portal and not allowing staff access to these applications jeopardizes a lawyer's mental health and well-being as follows:
  - a. vulnerability to increased errors;
  - b. working excessive hours; and
  - c. threatening a lawyer and their staff's financial survival.

If the BC Code s.6.1-5 and s.6.1-6 apply to all areas of practice, then the CBABC Immigration Section asks that LSBC exempt matters related to the practice of immigration and citizenship law, similar to the exemption that has been provided to real estate lawyers and their staff members in accessing the online Land Titles system and consider whether the rules may have an adverse impact on lawyers in other areas of practice.

Beyond the BC Code, immigration lawyers have an obligation to comply with the terms and conditions of the Representatives Portal as set out by IRCC. We currently can do so by signing our staff into our portals but this presents challenges where staff or lawyer work remotely, are away sick or on vacation, are in court, or in meetings. The CBA National Immigration Section has tried to discuss with IRCC the possibility of amendments to the Terms and Conditions of the IRCC portal to allow access by staff members under the direct supervision of lawyers, however, there has been no indication of any willingness to amend the current Terms and Conditions which currently read as follows:

**Terms and Conditions**

By accessing the IRCC Portal, you are agreeing to abide by the following Terms and Conditions of Use:

1. You agree to keep your login information confidential and not share it with anyone. If you suspect that others have obtained your login

- information, you are responsible for contacting IRCC immediately by clicking on the "Report a problem or mistake on this page" button.
2. You certify that any information provided by you is true, accurate, and complete.
  3. You understand and accept that as a security measure for administrative reasons, IRCC can revoke your access to the IRCC Portal if you fail to abide by the Terms and Conditions of Use.
  4. You understand that it is your responsibility to ensure that third-party firewall and anti-virus software is in use. IRCC is not responsible for the security of your computer.
  5. You understand and accept that IRCC is not responsible for any losses or damages incurred by anyone because of :
    - The use of the information available to the IRCC Portal; and
    - Any restrictions, delay, malfunction, or unavailability of the IRCC Portal.

To continue, and to indicate your acceptance of these Terms and Conditions, choose "I Accept". If you do not agree with these Terms and Conditions, choose "I Do Not Accept".

Note: You will not be able to access IRCC's Portal unless you accept the Terms and Conditions.

Please let me know if you have any questions. We would be happy to arrange a time to discuss this situation when convenient. We look forward to hearing from you or a member of the LSBC staff at your earliest convenience. You are welcome to contact me at [helen.park@dentons.com](mailto:helen.park@dentons.com) or (604) 648-6516 or the CBABC Director of Advocacy, Jo-Anne Stark, at [jstartk@cbabc.org](mailto:jstartk@cbabc.org) or (604)653-7878

Yours truly,

Helen Park  
Chair, CBABC Immigration Law Section