

Cost-Benefit Analysis Self-Regulation Under Federal Statute

COST-BENEFIT ANALYSIS SELF-REGULATION UNDER
FEDERAL STATUTE
CANADIAN ASSOCIATION OF PROFESSIONAL IMMIGRATION
CONSULTANTS (CAPIC)

245 Fairview Mall Drive, Suite 407, Toronto, ON M2J 4T1
Tel: 416-483-7044; Fax: 416-309-1985; Web: www.capic.ca



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Background

Following the passage of Bill C-35 in 2011, Citizenship and Immigration Canada (CIC – now Immigration Refugees and Citizenship Canada) requested submissions from candidates interested in becoming the regulator of immigration consultants. As a result of this competitive process, the Immigration Consultants of Canada Regulatory Council (ICCRC) was selected.

To support the creation of this arms-length governing body, CIC established a Contribution in Support of the Regulation of Immigration Consultants. CIC and the ICCRC signed a \$1 million contribution agreement. The full amount of the contribution will be repaid by ICCRC this autumn in the final installment to the Government of Canada.

The ICCRC's objective, as outlined on the organization's website, is to effectively and fairly regulate immigration consultants with accountability and transparency. The ICCRC began operations as of June 30, 2011, and as of November 2016, there were 3,711 members in good standing. Membership consists of senior members with more than 15 years' experience (12% of membership), members with 5 to 15 years' of experience (25% of membership), and a majority of members who joined within the last 5 years (63% of membership). Approximately 60% of members are younger than 49 years old, and the female/male ratio is 51%/49%.

ICCRC was established as a 'Non-profit Corporation' and has no regulatory powers to pursue unregulated immigration practitioners or impostors within Canada. ICCRC can only make referrals to the CBSA. Since the CBSA has limited resources and other priorities, such as national security, only major cases can be pursued when the CBSA has the resources. As a result, many unauthorized practitioners (UAPs) causing harm to consumers still slip through the cracks.

In light of the challenges posed by the CNCA and ongoing problems caused by UAPs, the concept of a Federal Statute crystallized as the best solution to not only address these problems, but to secure long-term, definitive regulation with protection of consumers in mind.

The best approach to addressing these challenges, including the restrictions caused by the application of the Canada Not-for-profit Corporations Act (CNCA), is the implementation of a Federal Statute, which will improve and clarify the regulation of the profession, while strengthening consumer protection.

The Regulatory Proposal

This cost-benefit analysis will use the status-quo as its baseline (i.e. CBSA responsible for the investigation and penalization of unauthorized practitioners, and ICCRC subject to CNCA). The baseline will be compared to the alternative of providing additional regulatory powers via a Federal Statute to the current regulator.



The analysis will also include important subjects, such as:

- Strengthening consumer protection against unauthorized immigration practitioners (UAPs);
- Harmonizing federal & provincial legislation, with clear cease and desist powers for the federal regulator to penalize both unauthorized practitioners and RCICs who do not follow the rules;
- Increasing consumer confidence in the immigration system and in the immigration consulting profession; and,
- Exempting the regulator from the CNCA to ensure operational stability and governance.

Costs of Regulatory Proposal

COSTS TO ICCRC

- The following table shows the number of complaints received by ICCRC, separated by complaints against RCICs and unauthorized representatives (UAPs). There are approximately 250 complaints against UAPs each year.

	YEAR END JUN 2012	YEAR END JUN 2013	YEAR END JUN 2014	YEAR END JUN 2015	YR END JUN 2016	YEAR TO DATE (JUL- NOV 2016)	SINCE INCEPTION
Complaints received against Members (RCICs)	241	302	308	330	363	116	1,660
Complaints received against Non-Members	182	373	201	253	126	23	1,158
TOTAL COMPLAINTS RECEIVED	423	675	509	583	489	139	2,818

- Right now a team of two (2) investigators handles complaints against RCICs.
- Pursuing complaints against UAPs should be less labour intensive, as it involves a simple determination of whether a) the person is an authorized agent, and b) the activity or service promotion in question goes against the provisions of the Immigration and Refugee Protection Act (IRPA).
- Based on the resources required to handle complaints against RCICs (2 investigators), it is prudent to assume that a maximum of **2 additional investigators** could handle at least 400 files per year. This assumption was confirmed by 3rd party investigators working for ICCRC.
- With respect to potential court proceedings, **1 in-house lawyer** would be required. These responsibilities would not require full-time attention; the in-house lawyer would be available for other duties within ICCRC to address complaints and discipline or organizational matters, which are currently outsourced. This assumption was confirmed by 3rd party investigators working for ICCRC.

Summary of assumptions based on consultations with LSUC (Law Society of Upper Canada):

- In consultations with LSUC executives responsible for professional regulation, case management and investigations, a rate of approximately 700 cases/year, per investigator was provided. However, there is an intake person doing a risk assessment and taking on some of the work load of investigators. Being conservative the productivity is at least comparable to ICCRC, and confirms the estimations LSUC now uses an in-house lawyer (less expensive than outsourcing), who spends part of their time on court proceedings against UAPs and is available for other LSUC matters.



HUMAN RESOURCES COST ESTIMATE

- 1 lawyer with sufficient experience: a **maximum of \$150k per year** as per Ontario salary statistics. According to LSUC, half of the position is more than sufficient for UAP judicial work. For the first year, it is conservatively assumed that 100% of this position would be devoted to enforcement against UAPs.
 - Year 1: \$150,000
 - Year 2 plus: \$75,000
- 2 investigators at a rate of \$7k/month -->\$84 k for retired ex-RCMP officers
 - Year 1 plus: \$168,000
- Recruiting costs & initial training for lawyer (investigators are outsourced): \$15,000 (\$12,000 recruiting plus \$3,000 in training)
 - year 1: \$15,000 onetime cost

→ **TOTAL MANPOWER COSTS: Year 1: approximately 335,000; Subsequent years: approximately \$245,000**

LITIGATION COST ESTIMATE

- In talks with LSUC, of the 200 to 250 UAP cases per year, only 6 were prosecuted with injunctions. Most of the cases were either handled successfully with 'cease and desist letters' or were closed due to insufficient evidence. And only 1 or 2 per year went to contempt proceedings. With all these proceedings done by an in-house lawyer, ICCRC will realize substantial cost savings.
- Average processing cost of injunctions: Until this year LSUC retained external counsel to represent the Law Society in court proceedings to obtain an injunction. The average cost of those services was \$19,700. (Note: there was one matter that was quite lengthy and, as a result, skewed the average. In order to give a better idea of the costs we assume a median cost of \$12,200.)
- Remark: with the exception of the court fees, these costs would be off-set by the salary of the new in-house lawyer.
- Average fines: As LSUC seeks injunctions, fines are not awarded. However, LSUC seeks and often obtains costs awarded to the Law Society by the Courts. Since 2013, the average costs awarded is \$12,600.
- For the federal regulator, federal injunctions might be employed and the difference would be realized in court fees.
- According the Federal Court Rules, Tariff A, court fees including Registry & Witness fees, could range between ~\$500 to \$2,000 depending on the number and use of witnesses. For this analysis we used an average of \$1,000.
- Considering the research for the number of cases, it is conservatively assumed 20 in the first year and 10 in the subsequent years.

→ **TOTAL LITIGATION COSTS: Year1 \$20,000; Subsequent years: \$10,000**



OFFICE SPACE AND EQUIPMENT COST ESTIMATES

- As the investigators are outsourced this would only be a factor for one person, the in-house lawyer. Existing space should be available and fixed costs negligible. Therefore, there should be no impact on lease or leasehold improvement costs.
- Furniture and required equipment are likely also available or could be acquired at minimal cost. However, a budget of \$10,000 has been allocated for the analysis.

→ TOTAL OFFICE SPACE COSTS: Year 1: \$10,000; Subsequent years NEGLIGIBLE

TOTAL COSTS TO ICCRC: Year 1: \$365,000; Year 2 plus: \$255,000

NOTE: COSTS ARE ZERO IF SUBSIDY IS PROVIDED FROM GOVERNMENT BENEFITS

COSTS TO GOVERNMENT

- This can be fairly estimated by considering the cost assumptions used in the CIC Cost-Benefit Analysis provided in 2011 for the creation of ICCRC. This could be verified with appropriate government contacts. In 2011, the government costs were estimated for the establishment of a new regulator with all associated human and physical capital expenses.
- With the proposed new authority in a Federal Statute, only the creation of a new division to the existing regulator would be required. The potential government costs for the Federal Statute are addressed by analysing each section of the government assumptions from 2011, and considering the new tasks and responsibilities.

GOVERNMENT SUBSIDY COST ESTIMATION

- Currently, the Government of Canada provides financial resources to Canadian Border Services Agency (CBSA) to track down and discipline Unauthorized Practitioners (UAPs). Budget 2017 allocated \$29 million for CBSA to pursue “criminal investigations”. The scope of these investigations cover everything from violations under the Customs act, to the Immigration, Refugee and Protection Act, as well as infractions on various food, plant, and animal legislation and other border related legislation.
- While specific funding allocations for addressing unauthorized immigration practitioners (UAPs) was not featured in the budget, we believe the funding for pursuing unauthorized consultants would fall under this \$29 million for criminal investigations, and that it would be reasonable to assume that \$1 million of this budget could allocated to the UAP task.
- When it comes to financing the federal statute proposal, we would suggest that resources initially dedicated to CBSA to tackle UAPs could instead be directed to cover costs associated with introducing a federal statute for the profession. The rationale for this is that CBSA would no longer have to spend its time and resources on chasing UAPs, as this would be the job of the regulator (as determined by federal statute).
- Of course, this could only be done after the government has conducted its own analysis and costing, and CAPIC would welcome alternative methods of financing the federal statute proposal.
- Importantly, we do believe that this could be financed without raising membership fees for our consultants. The Government has always agreed that membership fees should be affordable in



order to encourage participation. We would not want to create a system which discouraged immigration consultants from becoming members with the regulator, undermining the objectives of the regulator and federal statute.

- The subsidy itself could be reviewed every two years to ensure appropriate value for dollar. **Total additional Subsidy Costs: Year 1: \$365,000; Year 2 plus: \$255,000**

TOTAL COSTS TO GOVERNMENT: Year 1: \$525,000; Year 2 plus: \$255,000

COSTS TO PROVINCES/TERRITORIES

- **Assumptions from 2011**

Where CSIC is replaced by a new not-for-profit governing body, all of these provinces will need to reflect a change to Canada's Regulations in their own documentation referencing the new governing body. Manitoba's changes will incur costs given the need for amendments to its Act and Regulations. Below is an estimated value for Manitoba's transition costs based on equivalent federal costs to perform similar regulatory changes. For the other provinces, the adjustment cost is negligible and is not calculated.

Table 9: Cost to Provinces (C\$)

Statistic	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Cost to Provinces (Manitoba)	\$100,000*				

* CIC's estimate for Manitoba

- **Assumptions for Federal Statute** (of note, Manitoba made the changes, and for Federal Statute none of the provinces had to do adjustments).

TOTAL COSTS TO PROVINCES/TERRITORIES: NEGLIGIBLE

Benefits of Regulatory Proposal

There are a number of qualitative benefits associated with this proposal that cannot be directly tied to cost savings. It is difficult to find a common denominator in estimating a monetary value for the improvement of consumer protection and confidence, the improved standing and stability of the regulator, or the harmonization legislation in Canada. For this reason, we have decided to state plainly the qualitative benefits of this regulatory proposal, including those that cannot be associated to dollars spent or saved.

REGULATOR (ICCRC)

- The Complaints & Discipline process would be standardized across Canada, and like other self-regulated professions, enforcement would be possible against licensed and unlicensed individuals;



- Currently, the regulator does not receive any updates or feedback on the progress of complaints against UAP's once referred to CBSA, sometimes only hearing through media if cases were finalized. Now, the regulator would be informed of case statuses at any point, and have full control of the process;
- The regulator's standing would be largely improved among foreign government entities, particularly if addressing concerns about activities of UAP's abroad;
- The operational stability of the regulator would be much improved by being exempted of the CNCA (Canada Not-For-Profit Corporations Act), which clearly is not suitable for the mission and objectives of a regulator, and;
- The regulator's improved standing would also better facilitate conversations with provincial/territorial counterparts when it comes to addressing overlapping regulations.

REGULATED CONSULTANTS

- The current inadequate enforcement against UAP's and the public's difficulty in differentiating licensed from unlicensed practitioners still casts a shadow on the immigration consulting profession. Under a federal statute with increased powers for the regulator, consultants could be proud of their self-regulated profession which has been established with hard work, enthusiasm, and a strong belief in Canadian values.

CBSA

- With a limited role in pursuing UAP's, CBSA could focus instead on national security and other core mandates critical to public safety.

FEDERAL GOVERNMENT

- The Government of Canada has the potential save revenue through the creation of a federal regulator. Funds currently dedicated to CBSA to discipline UAPs would be put to their full potential under a federal statute, rather than competing with other national security priorities as they were under CBSA. In qualitative terms the Government would see even more public confidence in the integrity of the Canadian immigration program.
- A Federal Statute would provide the opportunity to negotiate agreements with appropriate foreign government departments, in order to address UAP's handling Canadian immigration files, who operate outside of Canada. This type of international collaboration has resulted in previous success; there was a positive example in the past where the Immigration Minister Jason Kenney talked about this issue triggering a subsequent crackdown in a specific province in India.

➔ **Total direct monetary benefit Government: \$1,000,000**

PROVINCES AND TERRITORIES

- Many provinces have now their own provincial Immigration legislation, or are planning to implement one. Most of this existing and proposed legislation complements the task of improving consumer protection in Canada's immigration system. However, some of this legislation overlaps with regulations and policies of the federal regulator. This leads to consumer and practitioner confusion. Harmonizing of these sections with the federal regulator would allow for the provinces



to potentially free up funds from these overlapping activities and use it for other purposes at the provincial level.

CANADIAN PUBLIC AND WOULD BE IMMIGRANTS

- Consumer protection has been largely improved by the implementation of the federal regulator ICCRC in 2011. However, the public is still vulnerable to the illegal activities of UAP's and many incidences still go unpunished and/or continue. Most of the press reports and reports to CIMM confirm the problem with UAP's. A federal regulator would help address these challenges.
- Further, there would be less confusion for would-be applicants on where to go to for assistance, and they would obtain better feedback and action on their complaints against an UAP.

Costs and Benefits Results

Most benefits associated with the creation of a federal statute are qualitative in nature. That said, there is a monetized benefit of \$ 475,000 (\$1,000,000 minus \$525,000) in the year 1, and for each subsequent year of \$745,000 (\$1,000,000 minus \$255,000).

Please note that we did not calculate the ICCRC expenses as we calculated instead a Government subsidy in the same amount. Otherwise, we would count these costs twice.

The qualitative benefits of a federal statute far outweigh the costs indicated, given the impact it would have on both addressing UAPs and improving the standing and credibility of the regulator and profession more broadly. We respectfully submit that in the interest of consumer protection, this Cost-Benefit Analysis be considered in evaluating the proposal for a federal statute.

Thank you for your kind consideration.



APPENDIX A

Assumptions for Costs & Benefits

- Total Net Benefit/Cost=Total Present Value of Benefits – Total Present Value of Costs
- Discount rate will be used for calculations beyond start-up with one-time costs

ESTIMATED COSTS

Start-Up Costs

- no calculation of opportunity costs -yield on 10 year government bond- as loan option would not be feasible
- Instead subsidy financed by funds not allocated to CBSA
- Costs would include hiring/outsourcing of additional staff of 3 and not covered litigation costs

CIC Corporate Advisory Support Costs

- Equation to measure: *Corporate Advisory Support Costs=FTEs*salary + administration costs*
- Not applicable

CIC Transition Costs

- Represent the costs associated with administrative change. For example, the costs associated with drafting the legislation, and operational and information management
- Equation to measure: *Transition Costs=FTEs*salary + administration costs*
- One-time costs

Government Subsidy Costs

- Financed by freed funds from CBSA budget
- Used to off-set additional costs from regulator

ESTIMATED BENEFITS

CBSA funding

- Funds used for UAP's could be removed from budget



CALCULATION TABLE FOR 5 YEARS

COSTS

Description	Year 1	Year 2	Year 3	Year 4	Year 5
Government Transition Costs	\$160,000	N/A	N/A	N/A	N/A
Government Subsidy Costs = ICCRC Additional Costs	\$365,000	\$255,000	\$255,000 review	\$255,000	\$255,000 review
<u>TOTAL COSTS</u>	\$525,000	\$255,000	\$255,000 review	\$255,000	\$255,000 review

BENEFITS

Description	Year 1	Year 2	Year 3	Year 4	Year 5
CBSA FREE BUDGET	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
<u>TOTAL BENEFITS</u>	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000

TOTAL NET BENEFITS

Description	Year 1	Year 2	Year 3	Year 4	Year 5
TOTAL COSTS	\$525,000	\$255,000	\$255,000 review	\$255,000	\$255,000 review
TOTAL BENEFITS	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
<u>TOTAL NET BENEFITS</u>	\$475,000	\$745,000	\$745,000	\$745,000	\$745,000