

2017

CIMM Immigration Consultants Study Submission

CIMM IMMIGRATION CONSULTANTS STUDY
CANADIAN ASSOCIATION OF PROFESSIONAL IMMIGRATION CONSULTANTS



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0. EXECUTIVE SUMMARY

In 2011, the Immigration Consultants of Canada Regulatory Council (ICCRC) was designated by the Government of Canada to regulate Canadian immigration and citizenship consulting, as well as international student advising professions.

This Canadian Association of Professional Immigration Consultants (CAPIC) submission provides an analysis and evaluation of the limited regulatory powers that exist when dealing with unregulated immigration practitioners, also referred to as ghost consultants or Unauthorized Practitioners (UAP), as well as an overview of challenges facing immigration consultants such as overlapping provincial regulations.

In trying to find solutions for the described problems, CAPIC recommends strengthening both consumer protection, as well the existing regulatory body in charge of regulating Canadian immigration consultants.

The results of this analysis show:

- There are no regulatory powers for ICCRC to pursue unregulated immigration practitioners within Canada; only referrals can be made to Canadian Border Services Agency (CBSA) for further investigation.
- CBSA has limited resources and other priorities, such as national security.
- Only major cases can be pursued, meaning many unregulated immigration practitioners who betray consumers slip through the cracks.
- Overlapping provincial regulations lead to consumer confusion with respect to who to contact in cases of abuse.
- Regulated Canadian Immigration Consultants (RCICs) are often equally confused by overlapping provincial regulations. There are operational challenges arising from ICCRC being subject to the CNCA (Canada Not-For-Profit Corporations Act), which does not align with the mission and objectives of a regulator.

CAPIC is recommending potential solutions to the challenges above. Some of these recommendations could be implemented in a short timeframe, such as referencing ICCRC in both Memorandum of Understanding (MOU) and Provincial Nominee Program (PNP) agreements between the federal government and provinces. One solution that would address all described shortcomings effectively is the creation of a Federal Statute for the existing regulator. The Statute inter alia could include sections about:

- Investigative and prosecution powers to pursue unregulated immigration practitioners or impostors Canada-wide (tools such as cease & desist letters, investigations into illegal practice, court proceedings, significant fines, and prosecution would be available);
- Provisions about harmonizing overlapping provincial legislation with the federal regulator solely responsible for professional designation requirements, complaints and discipline Canada-wide;
- Exclusion of the Canada Not-for-Profit Corporations Act (examples exists); and,
- Definition of client/counsel or consultant privilege.



I. Immigration Consultants Industry

Original efforts to organize

In 1986 a group of consultants formed the first immigration industry association in Canada, known as the Association of Immigration Counsel of Canada (AICC). This group was interested in raising standards in the industry and in turn safeguarding clients, largely through the education of its members.

A second industry group named the Organization of Professional Immigration Consultants (OPIC) formed in 1990, with a similar focus. OPIC created a set of Rules of Professional Conduct for its members. In 1992, OPIC formed a partnership with Seneca College to start delivering immigration professional development programs for members.

OPIC & AICC were independent, but had a number of shared members. Leadership at both organizations recognized their common goal of improving the profession, and subsequently, AICC and OPIC began to work together when possible.

The fight to practice

Jaswant Singh Mangat, who had been trained as a lawyer in India, was operating Westcoast Immigration Consultants Ltd., providing services for a fee on immigration applications and at the Immigration and Refugee Board (IRB).

While the Immigration Act of 1978 allowed for non-lawyers to make representations at the IRB, no regulatory system had ever been created. As such, the Legal Profession Act of B.C. considered Mangat to be practicing law without a licence.

Starting in 1986, the Law Society of British Columbia (LSBC) took an interest in Mangat's practice. In 1994 an injunction was sought by the LSBC to force Mangat to cease representing clients, resulting in an injunction in 1997. Mangat appealed this decision, and it ultimately went all the way to the Supreme Court of Canada (SCC).

By the time it reached the Supreme Court in 2001, Mangat was a member of the Law Society of Alberta. In order to confirm the right to practice legally, OPIC had taken intervener status, and its President, Jill Sparling, had become the respondent. The case was successful, and the SCC ruled that federal law superseded the provincial one that frustrated its aims. Immigration consultants could legally practice as non-lawyers.

The requirement to regulate

After Mangat case, it was clear that in order to do business as immigration consultants, a regulatory body authorized by the federal government was required. AICC and OPIC had first tried to move towards this in 2000 by creating a joint organization to become the regulator, but this did not gain traction.



In 2002, former Immigration Minister Denis Coderre created an advisory committee to make recommendations on the regulation of the profession. AICC and OPIC executives were a key part of the committee. Ultimately, the committee ended up becoming the regulatory body; the Canadian Society of Immigration Consultants was founded in 2004 and became a stand-alone federal corporation. CSIC was authorized under the Immigration & Refugee Protection Regulations to licence members accordingly.

Those in the industry were given a chance to enter the now licensed field through meeting entry requirements for education or industry experience, language exams and a professional practice exam.

After the creation of CSIC, the need for a single professional association was clear. As a result, AICC and OPIC merged to create the Canadian Association of Professional Immigration Consultants (CAPIC).

An uneasy beginning

After a two year transition period, CSIC began admitting full members in 2006, resulting in immediate complications. A large number (roughly 40%) of members had been unable to meet required language standards, and were unable to join the organization. This meant a large number of professional consultants were left outside the tent, resulting in a revenue shortfall for the organization. This was further complicated by the leadership in the organization, which was found to be making lavish expenditures. Ultimately, some of the initial directors for CSIC resigned in protest over the spending of the board.

It also became increasingly evident that the corporate model of the regulator prevented it from taking any disciplinary action against any non-members that were representing clients - including the hundreds that had been unable to join.

There was also a legal shortfall in the Immigration and Refugee Protection Act (IRPA): representation or advice occurring *prior* to the completion of an application was not considered formal representation. An entire ghost practitioner industry lurked in the shadows. Non-licensed practitioners were advising clients who never declared the assistance.

The incomplete mandate, limited rights for members, and the questionable management of finances were some of the issues raised by a House of Commons Standing Committee report on the regulatory body in 2008. The recommendation in that report was for CSIC to be replaced.

Subsequent to that report, CSIC created the Canadian Migration Institute (CMI), a for-profit subsidiary of the regulator which was fully funded by membership fees. Another subsidiary named IMMFUND was also created with the objective of compensating consumers who had been victims of unlawful actions taken by immigration consultants. It is important to note that, even following the establishment of a new regulator (detailed below), funds collected by CSIC and transferred to fund CMI, IMMFUND and e-Academy were never transferred to the new regulator. This resulted in millions of dollars in membership fees winding up in the hands of a very small group of individuals who have since used the monies collected for running a small business.

Lobbying for a new start



The Standing Committee report intensified the rift within the consulting industry, with opposition to CSIC being led by CAPIC. CSIC began using the complaints and discipline system to silence and intimidate opponents. Efforts to reform CSIC through its board elections proved unsuccessful. Several CSIC members took their regulatory body to federal court and won.

Finally, Citizenship and Immigration Canada had to take action. Two processes were launched in the summer of 2010 to overhaul the regulation of immigration consultants. The first was a Request for Proposal for a new regulatory body. The second was the introduction of Bill C-35, the malignly titled "Cracking Down on Crooked Consultants Act".

While a new regulatory body would still be limited to disciplining its members only, the changes in Bill C-35 did move the definition of representation to its logical start - offering to give advice for compensation. This loophole had been closed and all consultants would have to be licenced to give advice regardless of the client's application status.

The second chance

In early 2011, Citizenship and Immigration Canada announced that the bid to reform the immigration regulatory system had been supported by CAPIC. While it was CAPIC's desire to remain an independent organization, a leadership group in the association put forward a vision for the Immigration Consultants of Canada Regulatory Council (ICCRC). While ICCRC had requested to move forward under Federal Statute, CIC determined that a federal not-for-profit corporation would be the ideal structure for the council.

Immigration consultants who were members under CSIC transitioned to ICCRC in late 2011. For the most part, ICCRC has avoided the financial and internal political strife experienced by its predecessor; however, its mandate remains problematic. Non-members are now breaking the law by representing clients for a fee, but it is not within ICCRC's jurisdiction to take disciplinary action. That instead falls to Canada Border Services Agency (CBSA).

II. Regulator (ICCRC)

Since June 30th 2011, the Immigration Consultants of Canada Regulatory Council (ICCRC) has served as the national regulatory body for our profession, designated by the Government of Canada as per Section 91(5) of the Immigration and Refugee Protection Act, to safeguard consumers of Regulated Canadian Immigration Consultants (RCICs) and Regulated International Student Immigration Advisors (RISIAs) who provide Canadian immigration and citizenship services.

Both IRPA and the Citizenship Act require anyone providing Canadian immigration or citizenship advice or representation for a fee or other consideration to be a member in good standing of ICCRC. Exceptions are made for members in good standing of provincial or territorial law societies, or members of the *Chambre des notaires du Québec*.



Vision: ICCRC's vision is to be an effective, fair and transparent regulator of the Canadian immigration consulting profession. The ICCRC aspires to be a role model for other regulatory bodies in the way it regulates the profession, carries on its business, and protects consumers.

Mission: To protect consumers of immigration services through effective regulation of immigration consultants and promotion of the benefits of using only authorized immigration representatives. The ICCRC establishes and delivers effective policies, practices, and procedures to regulate and educate immigration consultants and promote the use of authorized representatives to the public.

Consumer Protection: ICCRC aims to protect consumers by implementing and enforcing rigorous entry-to-practice standards, ongoing professional obligations, a complaints and discipline process, and informing the public of our role and the benefits of using a regulated immigration professional.

Organizational Excellence: ICCRC aims to apply best practices in both its governance and operations.

Public Trust: Through awareness and education, ICCRC seeks to achieve public trust as a respected, accountable and transparent regulator.

Sustainability: ICCRC wishes to be recognized by stakeholders as a fiscally and operationally sound, effective regulatory organization.

Membership Structure: Total membership in good standing (as of June 30th, 2016): 3,711

Members (Years of Experience)

15+ years – 12%

5-15 years – 25%

0-5 years – 63%

Mandatory Requirements to write an exam to become a Registered Canadian Immigration Consultant (RCIC)

- Be at least 18 years of age
- Be a Canadian citizen, Canadian permanent resident, or a Canadian citizen who is a Registered (Status) Indian within the meaning of the Indian Act (Canada)
- Graduate from an accredited immigration practitioner's program
- Achieve at least the minimum required score on an ICCRC-approved English or French language proficiency test
- Provide satisfactory police certificates from every country in which you have lived for six (6) months or longer since age 18
- Satisfy the Registrar of your good character and good conduct by completing the Statutory Declaration – Background and Good Conduct attesting to good character and good conduct; and
- Not presently be an undischarged bankrupt or involved in a current creditor proposal or income garnishment arrangement.



III. Problems with the Current Model

Consumer Protection

ICCRC was established as a 'Non-profit Corporation' and has no regulatory powers to pursue unregulated immigration practitioners or impostors within Canada. Only referrals can be made to CBSA, which has limited resources and other priorities, such as national security. This means that only major cases can be pursued if CBSA has the resources. Many unregulated agents damaging consumers still slip through the cracks.

To illustrate, ICCRC presently **does not** have the power to do any of the following:

- Send a cease and desist letter demanding an individual stop providing legal services they are not licensed to provide. Of note, other regulatory bodies which possess this authority often have success in convincing the individual to cease with their unlawful practice.
- Conduct an investigation, even if the accused persistently places public at risk.
- Ask an individual to sign an undertaking (agreement) to cease the unauthorized activity. This is a document that may be used later in court if the behaviour persists.
- Initiate court proceedings to seek an injunction. If the injunction is breached, this may result in an application to have the person found in contempt. Contempt can be punishable by fines or imprisonment or both. Also possible should be the prosecution of illegal practice and the charging of significant fines as well as probation orders if someone is convicted of unauthorized practice.

Unauthorized Practitioners (UAP) Complaints

The following are numbers about non-member complaints (aka Ghost Consultants or UAP's-Unauthorized Practitioners), and information we received on request from ICCRC.

	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

If a complaint is received against an individual who is **not** a Registered Canadian Immigration Consultant (RCIC), the Complaints and Professional Standards Administrator will investigate if the accused individual is a member of a provincial law society or the *Chambre des notaires du Québec*. If so, the Administrator refers the complaint, with the complainant's permission, to the respective regulatory body for their consideration. Should the accused not be a member of a provincial law society, or the *Chambre des notaires du Québec*, the Administrator will refer the complaint, with the complainant's permission, to Canada Border Services Agency for their consideration as an offence against either IRPA or the Citizenship Act.



In either case, the complainant is notified by ICCRC that the complaint has been referred.

Following a referral, the regulator receives essentially no feedback from CBSA or the RCMP on files referred to them. Neither CBSA nor the RCMP accept any investigative work that ICCRC's investigators have performed in relation to these cases (of note, many of these investigators are retired RCMP officers themselves). Lastly, these enforcement authorities generally do not disclose at what stage a file is at in their system.

In some cases over the past five years, ICCRC received a confidential email or telephone call from a specific investigator to advise that an arrest is about to take place (sometimes as much as two years later following an initial referral). Even when asked to provide a Registrar's Certificate, which is needed as prima facie evidence that the accused is unlicensed, the regulator did not receive any feedback that the matter is proceeding to a prosecution.

Often, the regulator is not provided with advance notice of media availabilities surrounding the arrest of unauthorized representatives. If this "heads up" were communicated in advance, the regulator could align their own communications department, and possibly attend these availabilities in conjunction with enforcement officials. As ICCRC is sometimes a partner in providing information to these authorities, this advance notice would allow ICCRC to address these accusations formally, rather than hearing about it on the six o'clock news.

Examples of damage caused by Unauthorized Practitioners (UAPs)

There have been quite a few newspaper reports on UAP's. Most of these reports only profile UAPs who have conned hundreds or even thousands of people.

- National Post: How a B.C. man pulled off one of the most sophisticated immigration frauds in Canadian history (Douglas Quan, January 14, 2016)
- CBC News: DDO immigration consultants face fraud, forgery charges; Brothers Rajinder, Resham Singh not authorized to give immigration advice (Aug 23, 2016)
- CBC News: Paper lives': Massive immigration fraud detailed at sentencing, Consultants earned thousands helping Chinese applicants defraud their way to permanent residence (Jason Proctor, October 28th, 2016)
- CBC News: Clients of convicted immigration consultant facing deportation for lying 500 more people under investigation for falsely obtaining permanent residency and Canadian citizenship (Eric Rankin, Nov 25, 2016)

Canada Not-For-Profit Corporation Act (CNCA)

ICCRC is subject to the CNCA (Canada Not-For-Profit Corporations Act), which clearly is not suitable for the mission and objectives of a regulator. The current CNCA has been in place since October 17th, 2014 and is



primarily focused on member's rights. This goes so far that section 152(6) and 163 allow members to submit ANY proposal or by-law for a vote, or that any member notwithstanding qualification or experience can become a director on ICCRC's board. This means that a RCIC who just started their own profession and could still become a director and be responsible to regulate the profession.

In CAPIC's view, the CNCA is feasible for professional associations who have to pursue the interests of its members, but not for a regulator whose mandate is to protect the public first and foremost.

Under this model, in a worst-case scenario, by-law changes which negatively impact consumer protection could be proposed and passed. This potential for operational difficulties is combined with the reality of a young and growing profession: 63% of RCIC's have only been in business for five years or less. As these individuals are new to the profession, the important distinction between the role of the regulator versus that of a professional association may not be made.

Overlapping Provincial Regulations

Section 95 of the Constitution Act recognizes the shared jurisdiction of federal and provincial governments, as well as the paramountcy of federal law. When it comes to immigration, there is no clear boundary between federal & provincial jurisdiction, and the existence of side-by-side legislation has been widely accepted providing these laws are in harmony with one another.

With this in mind, many provinces have implemented their own immigration-related legislation over the last decade, mainly triggered by the use of Provincial Nominee Programs (PNP). The development of provincial legislation and regulation has resulted in some overlap between these rules, which has led to consumer confusion, specifically when looking to report cases of abuse.

For example, existing regulations in Saskatchewan have led to jurisdictional questions around fault determination & penalties. The province has taken the position that ALL applications (even federal) should be looked at through a provincial lens if there is a potential for the applicant to land in SK. As well, different understandings of client/solicitor privilege have resulted in conflicts, leading to the request that information be released about ALL clients. In PEI, policies restricting the filing of federal applications for permanent residence of business categories to only to RCIC's who are registered and live in PEI, disallowing many RCICs to act as authorized representatives for would-be immigrants to this province.

It is likely that this overlapping regulation has resulted from provinces not being clear about the existence of a federal regulator, or its role. An example of where a federal regulator has been considered with success is in Ontario, which recently implemented its immigration regulations. Attempts were successfully made not to overlap policies or regulations, and to remain open for discussing MOU's between the Federal Regulator and Ontario for information exchange and even more efficient consumer protection. This is a process we would like to see emulated across Canada.



The existing lack of awareness of the federal regulator and its role could be corrected through more communication from the federal government. There was a missed opportunity upon implementation of the regulator to include reference to ICCRC in PNP agreements between the Government of Canada and provinces. While many of these agreements are as old as 2005, there are regular renewals and annual update letters which provide an opportunity to address this oversight.

IV. Potential Solutions

Unauthorized Practitioners (UAP) Complaints

One solution could be to provide CBSA with sufficient dedicated resources to proceed with each complaint, rather than only major cases. The question is whether CBSA would embrace this option given their main role is national security, something they may prefer to focus on exclusively to facilitate maximum success.

Another solution would be to provide the regulator, ICCRC, the statutory authority to proceed with complaints against UAPs in addition to those against licensees. ICCRC has the existing infrastructure and could add a department or division responsible for UAPs. This could be enabled through a Federal Statute. In fact, most if not all other regulators have their own statute making them stronger in pursuing their jurisdictional responsibilities.

The additional resources could be supported by the federal government, which would likely be more cost efficient than the CBSA option.

Canada Not-For-Profit Corporation Act (CNCA)

Other regulatory bodies, e.g. the Law Society of Upper Canada, are exempt from the CNCA as the Act does not align with the mandate and objectives of a regulatory body. The exemption is embedded in their statute.

Theoretically, it may be possible to exempt the ICCRC with the current structure, but based on legal feedback it would be a very long, complex and expensive process without a guarantee of the outcome.

A Federal Statute would provide the opportunity to include an exemption much more easily, and at the same time solidify consumer protection before member interests.

Overlapping Provincial Regulations

An immediate action to help solve the problem of UAPs would be to include reference to the existing federal regulator, ICCRC, into immigration agreements between the Government of Canada and the provinces. This section could also include advising provinces to seek a MOU with the federal regulator for harmonizing regulations and policies and to exchange information through regular direct communication.

The short section for the agreement could be something like:



“Federal law requires that immigration practitioners who provide Canadian immigration services for a fee, in Canada or abroad, must be registered with the ICCRC and accredited as a Regulated International Student Immigration Advisor (RISIA) or a Regulated Canadian Immigration Consultant (RCIC). Exceptions are members in good standing of provincial or territorial law societies or the Chambre des notaires du Québec.

ICCRC is the national regulatory body authorized by the Government of Canada to safeguard consumers by regulating two professions: immigration consultants and international student advisors.

Any provincial matters with respect to immigration consultants and consumer protection should be brought to and resolved by the ICCRC. A MOU or agreement between the province and ICCRC for clarifying these matters is encouraged.”

A Federal Statute would offer the opportunity to address provincial concerns and needs, while clarifying jurisdiction to avoid overlapping regulation. This would also strengthen the mandate of the regulator to the benefit of consumers.

V. Examples of Professions Regulated by Statute

Air traffic controllers and related occupations are federally regulated in Canada. They are required to be registered with the federal regulatory authority (in this case, Transport Canada) to be authorized to practice as an air traffic controller anywhere in Canada.

While RCICs are allowed to work anywhere in Canada, they are regulated not by a Federal Statute, but by a non-profit company subject to the CNCA.

Even though it is a provincial statute, the Statute of the Law Society of Upper Canada could be used as guidance when drafting a Federal Statute for our profession.

VI. Organizational Regulator Changes for New Authority

Based on conversations with the Law Society of Upper Canada, along with the experience of investigators familiar with the immigration industry, we estimate that the amount of additional manpower needed within ICCRC to accommodate this increased regulatory responsibility would be satisfied through the hiring of 1 in-house lawyer and 2 investigators. The in-house lawyer would also be responsible for other tasks of the regulator. However, for a conservative estimate we assume they would be working full-time on UAPs.

For example, in the experience of the Law Society Upper Canada injunctions and court contempt proceedings are the exceptions to the rule. Usually letters of ‘cease & desist’ suffice. Also, in most injunction cases, costs were awarded to the plaintiff.

Having said that, **more research is needed** to gain better understanding of the estimated costs, and also potential revenues resulting from fines paid either to ICCRC or the Government of Canada. Based on



preliminary estimates, we are hopeful that membership fees would not need to be substantially raised in order to finance additional personnel.

VII. Cost-Benefit Analysis

CAPIC has been working on a Cost-Benefit Analysis on a Federal Statute to help make the case for its importance to the Government of Canada, and to highlight potential costs associated with taking this action. This is an extensive task and CAPIC continues to collect information in order to support this analysis. For context, the cost-benefit analysis for implementing the current regulator was 59 pages in length.

CAPIC's cost-benefit analysis will use the status-quo as its baseline (i.e. CBSA responsible for penalizing unauthorized practitioners and ICCRC subject to CNCA). This 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 unregulated immigration agents;
- Harmonizing federal & provincial legislation, with clear cease and desist powers for the federal regulator to investigate and take disciplinary action against 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.

CAPIC will be pleased to provide this document once completed, which is anticipated in May 2017.

VIII. Potential 3rd Party Support

It is interesting to note that many stakeholders, including the provincial Government of Manitoba and the Canadian Bar Association proposed the concept of a Federal Statute during an evaluation of options by the Government of Canada in 2010. It is our understanding, based on conversations with executives of like-minded stakeholder organizations that this support for a Federal Statute continues, and could in fact be broader now. Additionally, it appears that CBSA would be open to examining this option. Discussions on this issue are ongoing.

We understand that a Federal Statute requires support from the provinces. In fact, their participation would be essential for harmonizing regulations and policies. In talks with CAPIC, at least some provinces, including Ontario, remain open to discussing this issue and participating in meetings to explore this further.



IX. Conclusion

Over the course of meetings with Members of Parliament from all parties, including many members of the Standing Committee on Citizenship and Immigration, it was made clear to CAPIC that consumer protection is of utmost importance for everyone, and that recommendations to improve consumer protection are always of great interest.

CAPIC believes that the time to take the step in evolving our industry is now, and that strengthening consumer protection is best achieved by a Federal Statute for the existing regulator, ICCRC. When considering the challenges that continue to face our industry, the Federal Statute model is the best solution to address these problems and secure long-term, definitive regulation with protection of consumers in mind.

We would be happy to provide Committee members any additional information required. We would also welcome further analysis and research from this Committee or an appropriate federal authority to evaluate the benefits of a Federal Statute for our profession in Canada. Thank you for giving us the opportunity to share our thoughts on this very important topic.