



August 30, 2017

The Honourable Ahmed Hussen, P.C., M.P.  
Minister of Immigration, Refugees and Citizenship  
House of Commons  
Ottawa, Ontario  
Canada K1A 0A6

**RE: CAPIC Response to the Citizenship and Immigration Committee Report “Starting Again: Improving Government Oversight of Immigration Consultants”**

Dear Mr. Hussen,

Please find attached CAPIC’s executive summary and detailed response to the Standing Committee on Citizenship and Immigration Report entitled, “Starting Again: Improving Government Oversight of Immigration Consultants.”

Our meeting on June 7<sup>th</sup> yielded several interesting talking points related to the below, namely improvements to the governance of the ICCRC (self-regulation under federal statute and exclusion from the CNCA), education and language admission requirements, the complaints and discipline process, a process for the review and resolution of fee disputes, and a tariff system.

We were glad to learn that your department encourages MOUs between the ICCRC and the provinces to harmonize the regulation of immigration consultants. On a separate note, we learned that the complaints and discipline process currently used by the ICCRC is modelled on that of the Law Society of Upper Canada.

Regarding the Report, we are delighted that the CIMM, despite the best efforts of powerful lobbying groups, understood and validated the vital role that regulated immigration consultants play in the Canadian immigration system and in the economic prosperity of our country, including access to justice. In our attached submission, we address some of our concerns with the Committee’s recommendations and offer solutions for greatly enhancing consumer protection.

We look forward to holding further discussions on similar industry issues in the near future. Thank you for your time and consideration.

Yours sincerely,

Donald Igbokwe, BA Hons, MA, CIP, RCIC.  
President, CAPIC – ACCPI

Copy to: Mr. Borys Wrzesnewskyj, M.P. Chair, Citizenship and Immigration Committee

August 30, 2017



# CAPIC Response to the Citizenship and Immigration Committee Report “Starting Again: Improving Government Oversight of Immigration Consultants”

## Executive summary

The Canadian Association of Professional Immigration Consultants (CAPIC) welcomes the recommendations put forward by the Standing Committee on Citizenship and Immigration in their Report on the immigration consulting profession. We are confident that the government, the current regulator, and CAPIC can all work together to set a new benchmark for consumer protection in the immigration consulting industry. CAPIC firmly believes that the immigration consulting industry in Canada can be greatly improved by maintaining the current regulator, by granting it powers to pursue unauthorized immigration practitioners and raising the education standards required to become a regulated immigration consultant.

While CAPIC fundamentally disagrees with the Report's recommendation to establish a new government regulator, we believe that, overall, the Report offers many useful suggestions for improving the ICCRC's structure. We support recommendations that seek to build on the successful measures previously achieved by the current regulator. We firmly believe that improvements to the ICCRC can be made and that, in many cases, are already being made.

The most important of such improvements is granting the ICCRC the ability to pursue unauthorized immigration practitioners (UAPs) through a federal statute. UAPs continue to exploit those seeking to come to Canada while tarnishing the image of regulated immigration consultants. We firmly believe that more power needs to be given to the regulator to eliminate this practice.

With these improvements, CAPIC is confident that Canada can set new and important standards for regulated immigration consultants, making the transition for those seeking to come to Canada as seamless as possible, while also cracking down on UAPs who seek to exploit them.

Below is a summary of our recommendations:

- That the ICCRC continue to regulate the immigration consulting profession.
- That the ICCRC be governed by federal statute with the authority to pursue UAPs and be exempt from the CNCA.
- That a study on this subject, including an implementation plan and funding alternatives, be initiated by IRCC, the ICCRC, CAPIC, and the relevant consumer protection advocacy groups.
- That structural adjustments of the ICCRC include higher education and language standards, tiered licensing requirements, a faster complaints mechanism, a review and resolution of fee disputes process, and a tariff system for services similar to that in legal aid.
- That all authorized representatives be included in standard requirements and processes that have consumer protection as their goal.
- That settlement agency services be licensed to provide immigration advice, subject to a tailored licence program implemented by the ICCRC.

## Contents

Executive summary .....	2
Preface .....	4
Introduction .....	4
1. Self-regulation under federal statute vs. government regulation.....	5
2. Addressing unauthorized practitioners .....	6
3. Structural adjustments .....	6
4. Settlement agencies and consumer protection.....	7
Conclusion.....	8
Summary of recommendations .....	8

## **Preface**

The Canadian Association of Professional Immigration Consultants (CAPIC) is the government-recognized national advocacy association and voice of immigration consultants, founded on the pillars of education, information, lobbying, and recognition. More than 4300 immigration consultants are members of the Immigration Consultants of Canada Regulatory Council (ICCRC). CAPIC's mandate includes providing continuing professional education about Canadian immigration matters and programs to RCICs, ensuring that they are better able to serve their clients and maintain consumer confidence. Regulated immigration consultants are able to provide personalized, tailored services to applicants as a result of their ethno-cultural and linguistic diversity, which reflects Canada's heterogeneous demographic. Members of CAPIC are offered the best continuing professional development education in the industry. As the professional association for RCICs, CAPIC leads, connects, protects, and develops the profession.

Immediately following the publication of the Standing Committee on Citizenship and Immigration's Report on the immigration consulting industry, CAPIC consulted its membership base as well as the broader consultant community for feedback. This took the form of two English and French town hall events, one in Ontario on July 13<sup>th</sup> and one in Quebec on August 9<sup>th</sup>, both of which were also accessible via webinar. This extensive process demonstrates the level of transparency and dedication that CAPIC provides not only its members, but all regulated immigration consultants, particularly when it pertains to their livelihood. As the only immigration consultant association, CAPIC thoroughly considered the direct and grassroots input from immigration consultants when compiling our response to this Report.

It is clear from our town hall meetings that consultants have taken the Report from the Standing Committee very seriously. Overwhelmingly, they support self-regulation under federal statute and an improved and strengthened regulator (i.e. the ICCRC) because they fundamentally value consumer confidence and protection.

## **Introduction**

CAPIC welcomes the Committee's Report and its recommendations for improving consumer protection beyond the current standards, insofar as the recommendations allude to the necessity of a federal statute for the current regulator, which would enable it to pursue unauthorized immigration practitioners (UAPs). However, CAPIC strongly believes that the federal statute should maintain the current method of self-regulation for the immigration consulting industry, rather than introduce a new government regulator. The ICCRC should be granted the statutory authority to implement the best consumer safeguards possible if it adequately identifies and addresses areas of necessary improvement.

The ICCRC has been effective throughout its first six years, though it is not yet optimally functional. What is important is that the current regulator demonstrates the ability to self-reflect and the will to act on improving weaknesses in an efficient and effective manner. CAPIC believes that the ICCRC has the potential to improve in areas outlined in the Report and that, in some cases, it is already doing so. The Report's biggest concern is the issue of UAPs. Despite the urgency of this issue, the ICCRC was never granted the necessary statutory power to address it, but is unfortunately being held accountable for abuses perpetrated by such individuals. We respectfully submit that for many presenters, committee

members, and the general public, it can often be difficult to distinguish between regulated and unregulated consultants.

We therefore support the provision of statutory power and authority, similar to that enjoyed by law societies, to the current regulator, which would enable it to pursue UAPs. Following this, we suggest a joint study and implementation plan involving the government department (IRCC), the current regulator (ICCRC), the industry's largest professional association and leading voice of immigration consultants (CAPIC), and the relevant consumer protection advocacy groups.

## **1. Self-regulation under federal statute vs. government regulation**

Many of the regulations that would apply to a government regulated body are already in place under the current regulator. Indeed, the ICCRC possesses either all or some of the requirements set out in recommendations 1-4, 6, and 21. Wherever improvements are necessary, we believe that the ICCRC is capable of incorporating them.

The primary difference between the Report's first recommendation and what currently exists is the establishment of government regulation rather than self-regulation. We believe many of the issues raised by Committee members can be addressed by having the current regulator improve its practices and address inefficiencies, rather than taking the step of creating a new regulatory body which unnecessarily reinvents what is already in place. Furthermore, many of the challenges raised by UAPs could be addressed were the current regulator given the power to pursue UAPs, which a federal statute would provide.

Even if the total shift alluded to in recommendation 8 were implemented, the potential lag between revoking the ICCRC's designation and constituting the new regulatory body would likely have serious financial implications, and could also result in an increase in UAPs due to temporary regulatory instability. Given that the new regulatory body would require a few years to show effective results, we are doubtful that a new body would achieve its desired objectives in a short time frame. The size and scope of this task should not be underestimated. As it stands, this recommendation is moot if the ICCRC stays on as regulator, subject to making the necessary improvements.

Recommendation 19 is a necessary but temporary solution until statutory authority is granted to the ICCRC, at which point it would receive funding to pursue UAPs. CAPIC recently submitted a cost-benefit analysis of self-regulation under federal statute to the Committee, concluding that there would be a monetized benefit of \$475,000 in the first year of federal statute regulation, and \$745,000 for each subsequent year.<sup>1</sup>

We support recommendation 21 with the hope that, eventually, statutory power will be granted to the current regulator. Funding to the CBSA is certainly welcome, and could be allocated in total or in parts to the regulator once the authority to pursue UAPs is granted.

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<sup>1</sup> Canadian Association of Professional Immigration Consultants, *Cost-Benefit Analysis Self-Regulation Under Federal Statute* ([link](#)).

## 2. Addressing unauthorized practitioners

The current regulator requires the necessary authority and funding to tackle UAPs. However, it is impractical that a lack of progress on this issue should result in the dismissal of the body most capable of addressing it, since any regulator with a similar lack of power would also struggle in this regard. As outlined in our study submission, which was presented to the CIMM in May, the ICCRC currently lacks the necessary authority to a) send a cease and desist letter demanding an individual to stop providing legal services they are not licensed to provide; b) conduct an investigation; c) ask an individual to sign an undertaking (agreement) to cease the unauthorized activity; and d) initiate court proceedings to seek an injunction.<sup>2</sup> Since the current regulator's mandate is principally to protect consumers and the public, it is set up to fail without the proper authority and funding to address the issue.

Accordingly, we strongly endorse recommendation 6 (albeit under the current regulator) as it offers a tangible solution that addresses the requirements of consumer protection. Through empowerment, the ICCRC will be able to fulfill its core function of protecting consumers. CAPIC and other stakeholders, such as the CBA and the Government of Manitoba, had previously asked that this be granted to the ICCRC.

A federal statute would allow the ICCRC to strengthen consumer protection safeguards, as would:

- exemption from the Canada Not-For-Profit Corporation Act, which is counter-productive to its mandate; and,
- mandated talks between all provinces and the federal regulator about memorandums of understanding to harmonize regulations and policies and to exchange information.

We respectfully submit that the current regulator has an effective complaints and discipline process already in place, but that it should be granted statutory power to deal with UAPs. We further suggest a joint study and implementation plan involving IRCC, the ICCRC, CAPIC, and the relevant consumer protection advocacy groups.

Recommendation 18 also touches on UAPs, but it is within the purview of IRCC, the CBSA, and the RCMP.

## 3. Structural adjustments

CAPIC accepts that the current regulator needs improvement in several key areas, but maintains that the relatively small scope of such improvements precludes any consideration of a new regulator. Hence, when we agree with a recommended improvement, it is always under the provision that “new regulator” be replaced with “current regulator,” when applicable.

The requirements set out in recommendation 3 are already in place under the current regulator. The profession's existing scope and areas of responsibility are sufficiently defined, and RCICs have already requested that ICCRC implement practice specialization standards that better reflect the varying levels of RCIC competence. However, improvements in education and language admission standards are

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<sup>2</sup> Canadian Association of Professional Immigration Consultants, *CIMM Immigration Consultants Study Submission* ([link](#)).

necessary. We respectfully submit that, in the interest of consumer protection, such standards be required of all authorized representatives, including lawyers and notaries.

As the next step in the professional evolution process, current education standards must be raised, as per recommendation 4. First, we are in favour of a two-year diploma program, including a practical element phased in as a one-year diploma. Second, we advocate for a university degree and/or pre-exam with an articling period as a pre-requisite to enter and graduate from the education programs. Finally, the language requirement should also be raised.

It is worth noting, however, that the current regulator already acts as the accreditation agency for these programs, making this particular stipulation redundant. The continuing education requirements are also in place and, in our opinion, they work quite well, although time-sensitive materials must be closely monitored with respect to relevance and quality. Regarding colleges that offer programs in consulting, we recommend that all instructors be actively practising as licensed immigration consultants.

The requirements set out in recommendation 9 are also already in place. A contribution agreement between IRCC and the ICCRC already exists, with regular reporting. In addition, the CIMM conducts a thorough review every five years to ensure further improvements, which is precisely why such a review is occurring this year.

We respectfully insist that the current regulator has the necessary tools to develop the type of tiered licensing system alluded to in recommendation 5. Moreover, we believe that the ICCRC should develop tiered licensing requirements for the Immigration and Refugee Board (IRB). CAPIC is already working closely with the IRB to develop a special education course for RCICs in order to fulfill this recommendation.

Finally, we welcome the complaint mechanism of recommendation 10, subject to a determination that the client did not deliberately use the unauthorized representative to evade the Immigration and Refugee Protection Act (IRPA). Concurrent safeguards should be introduced to avoid any further abuse of this process. We also agree with the review and resolution of fee disputes process of recommendation 7, and the tariff system similar to that which exists in legal aid, as outlined in recommendation 20.

## **4. Settlement agencies and consumer protection**

Settlement agencies are highly problematic because their representatives have neither the expertise nor the sensitivity to provide adequate advice on immigration matters and protect the consumer from harm. In fact, the overwhelming consensus among the immigration consultants surveyed was that settlement agencies do a disservice to the profession and consumers.

Specifically, recommendation 11 seems counterintuitive to consumer protection and contradicts the stipulations of recommendation 2. Any representative who is counselling a third party on immigration matters must have proper education in immigration and citizenship law, but we have come across many cases where NGOs unintentionally provide misleading advice with serious negative consequences for the applicant. Allowing NGOs without proper education to give counsel on immigration matters is not in

the best interest of consumer protection. Notwithstanding, the term “Basic Immigration Services” should be clarified, as simple applications have no place in law interpretation and practice.

Instead, we recommend that the ICCRC offer tiered licensing for NGOs, similar to the licensing of Regulated International Student Immigration Advisors (RISIAs), or refer the applicants to authorized representatives for proper assistance on all immigration matters.

Recommendation 12 runs contrary to the rigorous standards of recommendations 3 and 4, and would result in the government paying for immigration consulting services. Considering budgetary limitations, it is unclear whether actual settlement services would be compromised. Although some Committee members believe that NGOs possess high service standards, these services are being offered by unqualified advisors. As such, recommendation 15 can only be accepted if call centre services are provided by fully trained employees or authorized representatives. Otherwise, consumers must be warned on the IRCC website that call centre representatives provide general information only.

By the same token, consumer protection should include all those who are qualified to practice immigration and citizenship law, not just immigration consultants. Recommendation 13 should therefore include all authorized representatives in the same procedure it outlines. The same could be said of recommendation 16, which would allow for the participation of all relevant parties towards greater transparency on the role of authorized representatives and the dissemination of information on pertinent professional issues. Additionally, we fully support recommendation 14, which values consumer protection through education.

Recommendation 17 is, in principle, a great proposal, but it should be subject to a determination that the unauthorized representative was not used intentionally.

## **Conclusion**

While CAPIC fundamentally disagrees with the Report’s recommendation to establish a new government regulator, we believe that, overall, the Report offers many useful suggestions for improving the ICCRC’s structure. In this sense, we support recommendations that seek to build on the successful measures previously achieved by the current regulator. Above all, a regulator’s goal should be to protect the public and consumer against the greed of unscrupulous people and organizations. This is the ultimate value that guides our reaction to the Report and our push towards federal statute regulation.

Regulated immigration consultants are not the problem. In fact, with their empathy, passion, and knowledge of immigration and citizenship law, they are in the best position to welcome prospective immigrants to Canada. A regulator without the necessary power to stop unregulated consultants is a corrigible problem that should not tarnish an entire profession.

## **Summary of recommendations**

- That the ICCRC continue to regulate the immigration consulting profession.
- That the ICCRC be governed by federal statute with the authority to pursue UAPs and be exempt from the CNCA.

- That a study on this subject, including an implementation plan and funding alternatives, be initiated by IRCC, the ICCRC, CAPIC, and the relevant consumer protection advocacy groups.
- That structural adjustments of the ICCRC include higher education and language standards, tiered licensing requirements, a faster complaints mechanism, a review and resolution of fee disputes process, and a tariff system for services similar to that in legal aid.
- That all authorized representatives be included in standard requirements and processes that have consumer protection as their goal.
- That settlement agency services be licensed to provide immigration advice, subject to a tailored licence program implemented by the ICCRC.

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