



Canadian Association of  
Professional Immigration Consultants

L'Association Canadienne des  
Conseillers Professionnels en Immigration

# CAPIC's Recommendations for the Proposed IRPR Amendment of Removal Cost Fee Structure

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## **CAPIC's Recommendations for the Proposed IRPR Amendment of Removal Cost Fee Structure**

The Canadian Association of Professional Immigration Consultants (CAPIC) agrees that amending and modernizing the fee structure prescribed in s. 243 of the *Immigration and Refugee Protection Regulations*, [SOR/2002-227](#) (IRPR) is necessary.

CAPIC reviewed Canada Gazette, Part I, Volume 157, Number 48: Regulations Amending the Immigration and Refugee Protection Regulations ([the Amendment](#)), the 2020 Spring Reports of the Auditor General of Canada to the Parliament of Canada Report 1—Immigration Removals ([OAG 2020 Spring Report 1](#)), and the Immigration Removals, Report of the Standing Committee on Public Accounts ([PACP Report 5](#)) thoroughly and conducted extensive research on the topic.

Based on the initiatives taken, CAPIC has four concerns: (i) whether the recovery increase for destinations of the U.S. or St. Pierre and Miquelon is reasonable, (ii) whether the proposed costs may fulfill its intended objective of incentivizing volunteer departure, (iii) what would be the impact on vulnerable persons, minors, or other individuals, who cannot pay but have compelling reasons to return to Canada and (iv) whether the proposed detention cost could overstep the framework set by the *Canadian Charter of Rights and Freedoms* ([the Charter](#)).

Below is CAPIC's submission for recommendations to address the concerns.

### **Background**

#### **1. The objective of the Amendment**

The Amendment is one of the several actions taken by the Canada Border Services Agency (CBSA) to address one of the key challenges with the removals program identified by the OAG 2020 Spring Report and observations reiterated in the PACP Report 5: The lack of available incentives for foreign nationals to comply voluntarily with removal orders (Background para. 2, Amendment).

The objectives described in the Objective section of the Amendment are as follows: (i) to bring the framework of the recovery of removal costs up to date according to contemporary business practices and program costs, and (ii) to implement a removal cost recovery framework to incentivize persons concerned under a removal order to depart Canada voluntarily.

## **(1) Update the current framework of the recovery of removal costs**

CAPIC concurs with the achievability of this objective and agrees on the necessity of updating the stagnate current recovery removal cost framework, s. 243 of the IRPR, which has remained the same since its coming into force in 1993.

### **a. To increase the recovery costs accordingly corresponds to the objectives of IRPA**

The historical (real-time) releases of Consumer Price Index (CPI) statistics, measures of core [inflation](#) show, from 1993 to 2003, the lowest inflation rate in a month over each year is from 1% to 3.9%; the only exception is 1994, which carries the lowest monthly inflation rate at 0.6% for a couple of months among these 30 years. Mostly, the monthly inflation rate has been well above 1% and a few months of the last two years represent the peak of the inflation rate at 6% or above. Recently, the [Bank of Canada](#) expects inflation to remain at a little more than 3%. Based on the statistics, the stale recovery of removal costs cannot reflect the real costs at the expense of the Government of Canada. Bringing the cost recovery scheme up to date is in line with the objectives of IRPA prescribed in s. 3(1)(a) and 3(1)(f.1) as well as the application of IRPA prescribed in s. 3(a), which calls for immigration to benefit Canada socially, culturally, and economically and maintain the integrity of the Canadian immigration system.

### **b. The recovery costs for destinations of the U.S. or St. Pierre and Miquelon could be further examined**

The newly introduced escorted-based and unescorted-based approach should be much more effective than the current destination-based framework. CAPIC agrees that further developing the framework by destination is not necessary given the vast wide range of destinations. However, removal costs to destinations of the United States or St. Pierre and Miquelon are generally much lower than to other parts of the world. Even though the CBSA had modified the proposed amendment to address the concerns of stakeholders in the consultative process by applying the unescorted fee to land escorts, medical escorts, and minors even if removed under escort, which is a reasonable modification, the amount of \$3,739 for other unescorted removals to the United States or St. Pierre still seems too high. Given that s. 17 of the *Service Fees Act* allows for fees to be annually adjusted under the CPI without regulatory changes, the framework does not need to be forward-looking.

Following the above analysis, CAPIC suggests that further developing the framework to take the actual cost for the above-mentioned destinations into consideration could refine the framework.

**c. The doubts about the achievability of the objective of incentivizing the voluntary departure**

CAPIC has concerns about the achievability of this objective based on the data presented in the OAG 2020 Spring Report 1, which examined the delays in removal that were outside CBSA's control but focused on the removal processing with respect to the processing of enforceable removal orders that were under CBSA's control. (See "What we examined, " OAG 2020 Spring Report 1).

The OAG 2020 Spring Report 1 shows that despite a recent increase in removals, about 50,000 enforceable cases had accumulated in the CBSA's inventory continually. Among them, CBSA did not know two-thirds of the whereabouts of the individuals who were designated for removal.

The OAG 2020 Spring Report 1 recommended incentivizing voluntary departure, and CAPIC agrees that is a path to follow to fulfill the CBSA's mandate. Nonetheless, CAPIC has difficulties understanding the rationale behind the incentivizing objective when the two pieces of information are placed side by side; specifically, the enforceable removal orders under CBSA's control and the unknown whereabouts of two-thirds of the individuals under such orders. If whereabouts are unknown, how will incentivization be carried out?

**2. The impact on vulnerable persons, minors, or other individuals**

This is a concern raised by other stakeholders for those individuals who may not have the means to pay the recovery fees even if they have compelling reasons to return to Canada. The CBSA identifies both temporary resident permit (TRP) or humanitarian and compassionate considerations (H&C considerations) as the potential solutions for these individuals.

S. 24(1) of IRPA does confer the discretion to immigration officers to issue a TRP in justifiable circumstances, which should cover the situation caused by the inability to pay the removal costs borne by the Government of Canada.

However, CAPIC has doubts about the availability of the application of H&C considerations in this context. S. 25(1.03) of IRPA expressly states the payment of the applicable fees is the precondition for the Minister to consider an H&C request. The text of the Amendment has retained the wording of the current s.

243(1) of IRPR. Here “[u]nless” and “shall” work in tandem to imply the legal obligation of such individuals to pay the removal costs.

After the above examination, CAPIC raises this question for further examination: Whether the removal costs fall into the category of the applicable fees, which IRPA does not give the discretion to Minister to waive?

### **3. The potential Charter concern for the proposed detention cost**

The concerns expressed in the preceding sections are at the operational level. CAPIC’s biggest concern is whether the charge of detention costs could unintentionally overstep the boundary set out by the Charter. Specifically, if the proposed detention cost could be considered a cruel and unusual treatment or punishment within the meaning of s. 12 of the Charter?

In *Charkaoui v. Canada (Citizenship and Immigration)*, [2007 SCC 9](#) at paragraphs 95-98, the Supreme Court of Canada concluded that immigration detention is a treatment. In *Ogiamien v Ontario (Community Safety and Correctional Services)*, 2017 ONCA 667 at paragraph 7, the Court of Appeal for Ontario concluded that other conditions of detention are treatments, too.

Based on the jurisprudence, CAPIC cannot draw a concrete conclusion that the answer to the question raised is negative.

## **Recommendations**

CAPIC has examined the issues concerning the current removal cost recovery structure and explored the concerns with respect to the Amendment. Below are CAPIC’s recommendations as solutions to disperse the uncertainty that may be caused by the concerns.

### **1. The combination of category-based removal and destination-based removal**

CAPIC recommends combining the current destination-based removal framework and the proposed category-based removal framework to refine the new framework and reducing the amount of the recovery costs to removal destinations of the United States or St. Pierre and Miquelon to reflect the actual costs to these destinations.

### **2. Voluntary departure**

CAPIC recommends the CBSA take rigorous efforts to monitor the enforceable removal orders to ensure that the CBSA knows about whereabouts of the

persons to be removed and thus may actively encourage their voluntary departure.

CAPIC also recommends that CBSA remove foreign nationals under enforceable removal orders in a timely manner as documented in the CBSA's response to recommendations by the OAG 2020 Spring Report. With a timelier removal of enforceable removal orders, standard processing times and clear communication about same, such action may incentivize voluntary departure.

### **3.H&C option**

CAPIC recommends the further examination of the applicability of the H&C option to alleviate the negative impact of the Amendment on the most vulnerable groups.

### **4. Potential Charter concern**

CAPIC recommends the further examination of the interplay of the Amendment and the Charter to make certain that the proposed detention fee introduced by the Amendment is operative.

## **About CAPIC**

**The Canadian Association of Professional Immigration Consultants (CAPIC)** is the professional organization representing the interests of Canadian Immigration Consultants. The organization advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry. CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its nearly 5000 members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants. CAPIC is a major stakeholder consulting with federal and provincial governments and their respective departments on legislation, policy, and program improvements and changes.

### **Contact Us:**

[www.capic.ca](http://www.capic.ca)

Hui Zhang: [stakeholders@capic.ca](mailto:stakeholders@capic.ca)