

**ISSUES OF GREAT CONCERN RE  
SASKATCHEWAN'S 'DOUBLE-REGULATION'  
OF FEDERAL REGULATED IMMIGRATION CONSULTANTS**

CAPIC respectfully makes this submission on behalf of its close to 1,000 ICCRC-regulated members and respectfully requests that its suggestions receive proper consideration by the provincial authorities and the federal Minister of Immigration and Citizenship.

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## **Executive Summary**

### **Saskatchewan Legislation**

“All immigration consultants must be licensed by the Government of Saskatchewan before providing services to foreign nationals seeking to come to the province. Consultants must also be members of ICCRC.” Recruiters and immigration consultants must adhere to the Terms and conditions of their Licence...and provide financial security...”

### **Federal Licensing Body ICCRC**

The Federal government designated on March 19, 2011, ICCRC to provide “a commitment to enhanced standards of competence, integrity, accountability, viability and good governance.”

It is worth noting that ICCRC’s work in fulfilling its mandate of effectively regulating immigration consultants throughout Canada has been applauded by CIC and the former immigration minister, the Hon. Jason Kenney, as “very effective and thorough.”

### **Problem Fields Of Double Regulation**

- Negative Impact on ICCRC’s mandate: Unintentional creation of Ghost Consultants & Consumer confusion
- Raised cost burden for Saskatchewan due to administration of the legislation
- Restricting consumers in their selection of legitimate representatives
- Unjust distribution of privileges, status, or rights

### **Solution**

- **Short-term:** Under s.33 of the Act, Interjurisdictional Cooperation, “The Director, subject to approval by the minister, “may enter into agreements with any person or body empowered by an Act of the Parliament of Canada, [i.e., ICCRC] ,the legislature of any province or territory of Canada or the government of any other country or jurisdiction ....to administer or regulate foreign worker recruitment and Immigration services programs.”
- **Long-term:** Memorandum of Agreement between the federal government and Saskatchewan (and other provinces and territories) that the ICCRC is the federal regulator of immigration consultants and provides effective regulation of all its members.

## Saskatchewan Immigration Consultant Legislation

The Recruiter/Immigration Consultant responsibilities under the Act are intended to:

*“bring greater transparency and accountability to recruitment and immigration consulting services. The legislation promotes a high standard of service to clients and discourages unethical practices, contributing to a fair and competitive business environment”...*

*“All immigration consultants must be licensed by the Government of Saskatchewan before providing services to foreign nationals seeking to come to the province. Consultants must also be members of ICCRC.” Recruiters and immigration consultants must adhere to the Terms and conditions of their Licence...and provide financial security...”*

### Bill-83, An Act respecting Foreign Worker Recruitment and Immigration Services

This bill in **Part I, s. 2** defines “**immigration consultant**” as a “person who, for a fee or compensation, provides immigration services”. And it defines “**immigration services**” as those that “assist a foreign national in immigrating to Saskatchewan, including:

- i) Researching and advising on immigration opportunities, laws or processes;
- ii) Preparing or assisting in the preparation, filing and presentation of applications and documents related to Immigration;
- iii) Representing a foreign national to or before immigration authorities; and
- iv) Providing or procuring settlement services;

It goes on to further define yet another designation, that of “**foreign worker recruiter**,” and defines their rights to representation and obligations under the Act *alongside* that of duly-regulated “**immigration consultants**”.

In **Part III** the Act prescribes that neither “foreign worker recruiter or an immigration consultant” will provide services “***unless that person holds a licence***”. Both recruiters ***and immigration consultants are required to apply for a Licence for a fee.***

The Act makes it mandatory for consultants to “ **post a \$20,000 financial security prior to being issued a license**”.

### Exemptions to Licensing Requirements for Providing Immigration Services do *not* apply to Immigration Consultants

Under **s.4(2)(b)** it is made clear that such licensing conditions related to *immigration services exempt “a member in good standing of a provincial or territorial law society in Canada,”* and the provision does not attempt to make a distinction between, limit the scope or refer to the ability of “*paralegals*” (who are able to represent in tribunals immigration clients *only in the*

*Province of Ontario* under the **LSUC**) to offer their immigration services as “immigration consultants” or as “members of a [provincial] law society”.

Further, **Schedule, Part II, under s.4(1)**, shows that the Saskatchewan Act does not apply to a person who is acting on behalf of a School regulated pursuant to the Education Act, 1995. Therefore, ***agents of schools and universities are permitted to perform immigration services for clients without requiring a License.***

## Federal Licensing Body ICCRC

Lawyers and paralegals are regulated by **provincial law societies** and immigration consultants are regulated by a **federal regulatory body, ICCRC**, with strict requirements for membership and whose members must adhere to a **Code of Conduct** similar in its stringent requirements to that of provincial law societies.

\*The federal government implemented in 2011 a new Federal Regulator, the ‘**Immigration Consultant of Canada Regulatory Counsel**’. Its mandate is Consumer Protection, and it has the following tasks:

- Ensure that all ICCRC members have **met all criteria** to be a Regulated Canadian Immigration Consultant (RCIC);
- Maintain an **updated list** of all RCICs;
- **Accredit immigration practitioner programs** at educational institutions;
- Routinely **conduct audits of members** to ensure they continue to operate properly;
- Have a **strict Complaints and Discipline** process to crack down on unauthorized providers of immigration services (such as ‘ghost consultants’).

At the time that ICCRC was designated by the Minister of Immigration for recognition as regulator of immigration consultants, the **Provinces and territories** had all ***indicated their full “support for the proposed approach and for strong management and regulation of the Immigration consultants.”*** The provincial concerns were incorporated into the federal government’s granting of statutory authority leading to the creation of **a strong, competent regulator with rigorous membership standards and constant vigilance for its members ensuring the protection of consumers of immigration services throughout Canada.**

*In the Ministry’s website under “**FIND AN IMMIGRATION REPRESENTATIVE**”* readers are instructed to:

**“find out if an *immigration consultant*, lawyer, notary or paralegal is licensed to represent”...**

and specifically refers to **ICCRC as one (of only *three recognized*) regulatory bodies** and as the **“designated Regulator for immigration consultants”**; readers are instructed to conduct their research for authorized representatives accordingly to ascertain that their intended

representative is an **authorized member of one of the following three (3) regulatory bodies:**

- a Canadian provincial or territorial law society
- the Chambre des notaires du Québec
- **the Immigration Consultants of Canada Regulatory Council (ICCRC)**

It should be noted that *no extra mandatory research(es) with respect to valid provincial licenses and other added provincial licensing requirements* are brought to the attention of the potential consumer(s) of immigration services as mandatory requirements for their chosen authorized representative (AR) in perusing the official CIC website. The advice and guidance to consumers of immigration services, however, remain that their immigration service-provider be a member in good standing of **one of the three (3) regulatory bodies** and it ***specifically designates ICCRC as one of those three regulatory bodies under whose jurisdiction immigration consultants practice throughout all provinces and territories.***

**This is what the federal government stated:**

*“ The [new] regulatory change generates an overall net benefit to society because it supports the creation of a body that provides good governance, accountability and Integrity to immigration consultants as well as to Canada’s overall immigration Programs....and rigorous assessment of the competence of prospective members and procedurally fair and effective Complaint and Discipline mechanisms as well as certification procedures....contribut[ing] to more effective management of the Immigration Consultants industry.” [emphasis ours]*

## **Problem Fields of Double Regulation**

As all authorized immigration consultants are already regulated in all provincial jurisdictions by ICCRC (their federal regulator), the disclosure, contract requirements, prohibited practices as well as licensing and additional consumer-protection insurance fees affecting immigration consultants under the Saskatchewan Act, duplicating the ICCRC’s own requirements including liability insurance and Code of Conduct for its regulated members.

The double regulation in fact creates a few significant problems for consumers, federal and provincial Government, which we would like to address.

### ***Negative Impact on ICCRC’s mandate: Unintentional creation of Ghost Consultants & Consumer confusion***

Bill C-35 made it an offence for anyone other than an Authorized Representative to offer immigration services for a fee or other consideration, at any stage of an application or proceeding. Authorized Representatives include: members in good standing of ICCRC (known as Regulated Canadian Immigration Consultants – RCICs), lawyers in good standing with a provincial or territorial law society and notaries who are members in good standing of the Chambre des notaires du Québec.

Bill C-35 doubled the penalties from \$50,000 to \$100,000 and/or imprisonment of up to 2 years for conviction by indictment. Bill C-35 doubled the penalty from \$10,000 to \$20,000 and/or imprisonment for up to six months on summary conviction.

Nevertheless the **Saskatchewan Act allows agents of schools and universities to explain/provide immigration advice, complete immigration forms and so on. However, anyone who is doing this becomes as per Bill C35 a Ghost Consultant**, even he/she has been doing this unintentionally relying on the Saskatchewan Act and not being informed about the federal licensing requirements. This **also** becomes true with **Ontario paralegals**, who are only allowed to represent immigration clients in tribunals.

We are not lawyers, but could it not be that this scenario might very well be a legal problem similar to the Mangat Immigration case, where a judgment was done in the case of overlapping of laws by the Supreme Court of Canada? The paramountcy doctrine was applied against the inter-jurisdictional immunity doctrine because there was a clear double aspect in the law.

We also believe that **consumer confusion** will be created by the Saskatchewan Act adopting the ICCRC Code of Professional Ethics in regulation. This makes breaches of the Code subject to penalties under the Act. So there is the consumer going to if there is a conflict? To ICCRC or Saskatchewan? Is any judgment by either side recognized by the other? Are the judgments similar in penalties? Is this not synonymous to a duplication of fees and penalties and hindering fairness, consistency and certainty in the process?

### ***Raised cost burden for Saskatchewan due to administration of the legislation***

The duplication of consultant regulations drives up the costs to the administration of Saskatchewan's immigration programs, and indirectly inflates governmental budgets.

Administration includes registration of consultants, review of licensing applications, monitoring and enforcement, all activities done effectively by the federal regulator ICCRC.

Cost savings in this area would allow to focusing more on finding abuse and the enforcement of the Saskatchewan regulation towards unlicensed individuals, and to allow the provincial budget and policy makers to distribute more funds on their specific immigration goals.

### ***Restricting consumers in their selection of legitimate representatives***

It should be noted that, statistically, the overwhelming preference (63%) of most prospective immigrants or foreign workers is for the immigration services of authorized immigration consultants, and not lawyers (*see CAPIC archival press release*).

However, the Saskatchewan Act as currently worded may have the unintended effect of denying prospective immigrant applicants their choice of authorized immigration representative. Such restrictions may be unintentionally curtailing many immigration consultants' ability to practice and provide immigration services to a much-needed potential employee-pool in Saskatchewan

due to added, duplicated financial restraints as imposed by Saskatchewan current licensing requirements.

It acts as a limitation factor to Saskatchewan employers whose potential pool of workers is thus restricted by the inability of potential workers to be presented by their counsel of choice—an immigration consultant whose operating costs are not prohibitive to practice in the province of Saskatchewan where they intend to immigrate.

*HRSDC Minister Jason Kenney* (a Saskatchewan himself) said in an important announcement on April 12<sup>th</sup> regarding changes to improve the economic responsiveness of the *PNP Program in Saskatchewan* that he sees:

“a huge increase in immigration to the West...[and] immigration as a key tool in addressing the large and growing labour shortages which are hard to understate...”

### ***Unjust distribution of privileges, status, or rights***

CAPIC respectfully submits that the ‘**double regulation**’ requirements of the Saskatchewan provincial legislation specifically targeted toward competent and in good standing immigration consultants regulated by ICCRC, while exempting those immigration counsel regulated by provincial law societies -who are exempt from such extra licensing fees and other restrictive conditions of practice in the province- detracts from what would otherwise have, and ought to have, been a healthy business competition environment among those parties authorized to provide immigration services under **any of the three (3) Canadian regulatory bodies** for legal representatives.

The special licensing restrictions reduce an ‘even playing field’ among authorized, regulated providers of immigration services and renders it discriminatory by its implications.

In addition, ***agents of schools and universities*** are permitted to perform immigration services for clients ***without requiring a License***, but, inexplicably, regulated consultants are not exempt from licensing notwithstanding their regulated status and stringent criteria of entry to their practice under the federal regulator (ICCRC).

## **Solution**

For avoiding all the above problems CAPIC proposes as an immediate step to use a special provision included in ‘*The Saskatchewan Act re Foreign Worker Recruitment and Immigration Services*’: Section 33, *INTERJURISDICTIONAL CO-OPERATION*. It says

“The Director, subject to approval by the minister, “***may enter into agreements*** with any person ***or body empowered by an Act of the Parliament of Canada, [i.e., ICCRC ]***, the legislature of

any province or territory of Canada or the government of any other country or jurisdiction ....to administer or regulate foreign worker recruitment and Immigration services programs.”

In addition, ICCRC could be enabled to consult with the provinces regarding concerns and ensure they are ‘part and parcel’ of the mandate of the federally-appointed regulator. An intermediary mechanism could be set up to be attached to the regulator that deals with provincial regulation providing an official link between the provinces and ICCRC.

In the long run a clause could be inserted in the *Memorandum of Agreement between the federal government and Saskatchewan -and other provinces and territories-* that the ICCRC is the federal regulator of immigration consultants and provides effective regulation of all its members

However, these problem solving proposals might not be complete, and are supposed to act also as a catalyst for maybe other and better ideas to solve the problems in hand.

## Closing

Based on the existence of an effective federal regulator, CAPIC respectfully requests an exemption of regulated immigration consultants from the duplicating, costly and prohibitive licensing legislation. The Regulatory Council for Immigration Consultants may be said, in effect, to be the equivalent of a “*federal law society*” [our term] vigilantly overseeing the ethical practice of immigration consultants throughout Canadian provinces to ensure consumer protection with respect to immigration services being provided by authorized representatives.

We believe that the dilemma in the current Saskatchewan regulations has been caused by the old regulator who did not communicate properly with the Saskatchewan authorities. But the tools to fix it are there, and as we learned in the last ICCRC AGM the regulatory body is ready to work closely together with provincial authorities.

Consumers of immigration services are not at risk from effectively regulated immigration consultants in good standing with ICCRC!

CAPIC is looking forward to receiving your response and offers its resources in support of any solution chosen to become implemented.

Respectfully,

**CAPIC Presidents**

**c.c. Sask PNP Director**

**cc the Hon. Chris Alexander**

**c.c. the Hon. Jason Kenney**

**c.c. ICCRC**