Ottawa’s efforts to tackle unauthorized immigration practitioners welcome

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Immigration Minister Ahmed Hussen, pictured on the Hill in September 2018. The Liberal government has introduced new provisions under their budget implementation bill that aim to deter unauthorized immigration practitioners. *The Hill Times file photograph by Andrew Meade*

In its June 2017 report, the House Immigration Committee identified

unauthorized practitioners as a major problem. The report proposed a government-licensed federal statute to fix deficiencies with current regulator, the Immigration Consultants of Canada Regulatory Council.

In contrast, I'm arguing for a federal statute for the existing self-regulatory regime, subject to major improvements on the ICCRC's part. There's been renewed scrutiny on the issue with the feds' budget implementation bill, C-97, which proposes to introduce a government-licensed federal statute with self-regulatory elements. In a tweet, Steven Meurrens, an immigration lawyer, said the changes mean that the government is "essentially taking over the @IRCCC. The government is going to be setting licensing requirements, fees, discipline, etc. for a new College of Immigration and Citizenship Consultants."

The legislation also provides for a majority of minister-appointed public interest directors, the right for the minister himself to intervene at any time on any subject, and a designated observer.

Once it receives royal assent, the ICCRC can apply to become the college, obtaining all the enforcement powers that come with the act, following completion of the membership transition vote. In due time, the infrastructure, capital, and non-existing debts would be transferred to the college, thereby ensuring immediate use of its enhanced consumer protection capabilities.

The legislation's key elements are enhanced power for enforcement of the law (both inside and outside Canada); the implementation of a consumer compensation fund, and protecting terms such as "immigration consultant" and "citizenship consultant" to prevent misuse and fraud.

To deter unauthorized practitioners, Canada has the power to issue injunctions and warrants. But the majority of these unauthorized practitioners (UAPs) operate outside Canada's border. In a bid to address that, the legislation introduces an extraterritorial clause. For example, foreign governments could be asked to pursue Canadian citizens or permanent residents acting as UAPs outside of Canada.

One way to start using these powers is to focus on the top five immigration source countries before expanding to other countries.

The majority of licensed immigration consultants welcome the legislation. But even with the bill's unprecedented safeguards for consumers, some critics still maintain that either only lawyers should act as representatives in immigration and citizenship applications or that immigration consultants should be governed by provincial law societies. In a study, University of Windsor professor Lisa Trabucco responded to the former claim, arguing that a "lawyer's monopoly over all legal services is not consistent with either the broad range of statutory authority or the reality of non-lawyer provision of legal services in Canada." She goes on to argue that, "the extent of legal services provided by non-lawyers in Canada renders the lawyers' monopoly a useless fiction, and refutes the validity of lawyers' claims for restrictions on non-lawyer practice."

According to a legal memo by one of Canada's leading constitutional experts, Peter Hogg, effective extraterritorial powers can only be provided through a federal statute, so consumer protection cannot be achieved on a provincial level only. What remains is clear is that the House Immigration Committee members preparing the recommendations thoroughly considered extraterritorial powers in detail, arriving at the conclusion that only a federal statute could

correct the issues identified. This ultimately renders any supplementary recommendations superfluous and misguided.

The College of Immigration and Citizenship Consultants Act includes self-regulatory elements by allowing a minority of licensed immigration consultants to serve as directors, and it is assumed that there would also be committees with licensed immigration consultants as members.

Canada has a longstanding history of self-licensed professions, the centuries-old provincial law societies being one example. Self-regulation contributes to good governance and a better regulator by providing necessary industry knowledge and expertise, which, in turn, allow for more efficient problem-solving for industry-specific challenges.

Recently, there was a discussion on the sustainability of self-regulation as it pertained (interestingly enough) to the Law Society Ontario (LSO). Arguments were made that inherent in self-regulation is the potential for conflicts of interest. The LSO introduced a task force in response to improve governance, and outsiders viewed this as a constructive step.

The ICCRC's recent attempts at improving its regulatory processes reveal a willingness to accept the House Immigration Committee's identification of deficiencies. The provisions allowing the transfer of infrastructure, monetary, and intellectual properties to the proposed regulator—the College of Immigration and Citizenship—must be viewed in light of recent, positive development. One should also not forget that the ICCRC is barely eight years old and has shown due process considerable maturity.

There is a strong rationale for keeping the self-regulatory elements in this bill, as there have been significant improvements with the current regulator, which addressed the committee's identification of relevant shortcomings. With explicit powers given to the minister to conduct necessary changes—like a control valve for allowing more or less self-regulation depending on need—there are now sufficient incentives to keep the new regulator on its best behaviour.

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