

2012 Pre-budget Submission

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About the APCC

The Association of Professional Computer Consultants (www.APCCOnline.com) is a not- for-profit organization which provides: access to services for, and represents the interests of independent computer consultants. A national organization, the APCC was formed in 1985, with the majority of its members providing their services in the Information Technology sector.

Executive Summary

The contract services and staffing industry is a large but poorly understood segment of the Canadian Economy. It is a critical element of the Canadian labour market that offers;

1. **Benefits to hiring organizations** rapid access to talented Canadian workers
2. **Benefits to individual workers** through superior compensation and more flexible career pathways
3. **Benefits to the Canadian Economy** by attracting global companies to Canada and increasing the responsiveness of Canadian companies responding to new opportunities.

The contribution of the Contract Services Market in Canada is poorly understood and its stability is harmed by Canada's patchwork coverage of Federal and Provincial regulations. Further, current policies do a poor job of creating a clear and effective competitive framework while also protecting vulnerable classes of workers.

In order to position Canada to benefit from an efficient contract services market, the APCC recommends

1. Recognize the Staffing Sector as a defined market sector and develop programs to develop information about its size, segmentation and benefit to Canada.
2. Repeal the punitive *Income Tax Act section 127(7)* on Personal Services Businesses.
3. Develop policies and/or legislation that support the current free market nature of the contract services sector, while establishing a useful framework to protect the rights of vulnerable classes of workers.

Contract Services Industry Overview

The Global Economy, including Canada's economy, consists of goods and services. Labour and the manner in which organizations engage that labour, is a critical part of the services side of that equation.

Fulltime employment has always been the dominant form of engagement however over the past 40 years business and economic factors have led to a shift towards flexible contract engagements. This shift has affected all industries within the Canadian economy, from Information Technology to Accounting, Manufacturing and Retail, including government bodies at all levels.

There are no official measurements of how many workers participate in the contract service market (the majority this work is fulltime, and hence lost in the statistics); however industry estimates place the number at approximately 2.6 million Canadians. Most contract engagements are arranged through a 3rd party staffing firm which assist clients in identifying qualified and available workers in a rapid fashion.



Contract Services Market: Benefits to Hiring Organizations

For Canadian Hiring Organizations (Private and Public Sector), the contract services market provides a source for strategic flexibility, that allows them to rapidly acquire workers in response to quickly emerging opportunities and/or gain access to critical skills on a project basis. Benefits to Hiring Organizations include,

- Provides the ability to secure skilled workers at a lower cost, as compared to a complete outsourcing arrangement, or engagement with a full spectrum professional services firm (i.e. System Integrators - SIs).
- Create a mechanism to increase workforce flexibility in response to project engagements and service short term increases in demand.
- Provides a reliable and robust mechanism to attract and retain workers with rare or difficult to secure skill sets. Contractors will typically move between engagements more smoothly, while Full Time Employees tend to be less willing to change employers.
- Provides the ability to engage with workers very quickly (short time to hire).
- Provides a mechanism to attract and retain workers to a project oriented position or to an engagement that is temporary by nature. This is particularly important for situations where worker turnover can be costly and/or harmful to a project's success.
- Manage workforce costs/obligations for work that is of a temporary nature. For work of a defined duration, using contractors mitigates the administrative burdens associated with FTE's including HR Costs, Administrative Costs, Downtime costs if underutilized, termination costs at project completion.

Contract Services Market: Benefits to Workers

While we freely acknowledge the value of full time employment, many workers choose to work on contract for a portion of their career to the significant benefits it can present. For most workers, these primarily manifest as fluid access to the labour market and the potential to earn superior compensation. Other benefits to workers include

- Greater career independence and control over work
- The ability to capitalize on entrepreneurial opportunities by operating as a personal business
- The ability to self manage career development through contract selection
- The ability to self manage skills development through training and contract selection
- The ability to accommodate flexible hours and part time, if desired
- Superior compensation (typically 30-40% greater than FTE equivalents)
- The ability to earn a flexibility premium and be directly rewarded for skills development
- The ability to capture the 'business profit' in addition to personal wages
- Contractors are paid for all time worked

Contract Services Market: Benefits to the Canadian Economy

A healthy contract labour market is an important source of flexibility the Canadian Economy at large and to date has proven to be a strategy advantage in attracting Global companies to locate operations in Canada. This is particularly true in Information Technology, but also manifests in Financial Services and other sectors. Specific Benefits to the Canadian Economy include,

- Provides an efficient free market mechanism means to achieve the optimum allocation of scarce labour resources to hiring organizations
- Contracting provides a critical source of labour market flexibility, both in rationing access to scarce skill sets and in satisfying short term labour requirements.
- Provides very strong entrepreneurial incentives to individual workers.
- Delivers more tax dollars per worker, as compared to employee models (particularly with all levels of taxation are considered, i.e. Sales taxes, Corporate taxes & Income taxes)
- A fluid and highly skilled labour market can support attracting services work from offshore clients, thereby expanding the Canadian Economy.
- Supports the formation and growth of technical skill clusters. Flexibility and rationing of scarce technical expertise is critical to the development of specialist technical skills.
- Supports a healthy placement agency market, which increases the efficiency of the overall labour market (full time and contract placement)
- Flexible resourcing allows firms to be more nimble in meeting their business objectives, and hence more competitive.

Challenges & Barriers to Development

While the overall contract services market dynamic is positive, there are several legislative barriers that exist currently. These factors serve as an overhand on the growth of the contract services market and addressing them is a zero cost mechanism to improve and expand the industry's contribution to Canada. These barriers are,

- 1) There are few reliable sources of industry information and current economic statistics do a poor job of characterizing this industry. Collectively this has resulted in the industry and its contribution to Canada's economy, being poorly understood and often overlooked.
- 2) The industry is governed by a patchwork of Federal and Provincial patchwork of legislation and policy. This creates significant ambiguity and forms an overhang on market growth.

At the Federal level, *Income Tax Act section 125 (7)* governing Personal Services Businesses places individual workers at unfair risk of a retroactive reinterpretation of their tax status with potentially catastrophic financial consequences. It effectively serves to disadvantage small Canadian services businesses versus their large multinational peers.

- 3) Beyond this, the overall complicated regulatory environment has made it difficult to determine the regulatory obligations of hiring organizations across the country. Collectively this has enabled the importing of labour practices via foreign multinationals that do not understand the Canadian framework and/or seek to exploit gaps in the current legislation.

This situation can place classes of vulnerable workers in a tenuous position which hurts all parties involved. At the APCC, we further are concerned with the backlash and negative perception these situations can cause, which end up harming the entire industry.

Recommendations

Recognition of the Staffing Industry as a Market Sector

For lack of a better definition, the APCC advocates that the Contract Services and Staffing sector be recognized as a distinct aspect of and valuable contributor to the Canadian economy. We request that Statistics Canada evaluate its sampling methodology to determine methods for securing information about the sector and its contribution to the Canadian Economy and Labour Market.

Repeal *Income Tax Act* section 125 (7) & 18.1(p) – *Personal Services Business (PSB)*

These provisions were implemented in 1981 and effectively prohibit a Services oriented business with five or fewer employees from expensing standard business costs. The world and economy have changed dramatically from that time, with today over 70% of Canadian business occurring in the services sector, much of which is conducted by Small Businesses.

As it functions today Sections 125(7) & 18.1(p) are used to justify retroactive tax assessments for small services business and it frequently results in extremely punitive tax claims when typical business expense claims are rejected. These provisions are unevenly applied even across small businesses, and given that similar expenses claims would be valid for a large services organization or multinational (such as IBM), this tax provision makes little sense and requires government intervention to correct.

These provisions of the Income Tax Act are patently unfair to small Canadian businesses. It drives a cloud of risk to both hiring organizations and individual consultants that hurts the overall contract services sector.

Given its uneven enforcement, the tax benefit of these provisions is negligible and overall Services Businesses are a net benefit to government tax revenue when all levels of tax are considered (income tax, sales tax and corporate tax). We would be glad to provide additional information at your convenience.

Protect the rights of individuals

While the merits of contracting apply strongly to knowledge base workers and professionals, such is not always the case with non professional workers. We propose the government enact a legislative framework that encourages the current free market dynamics of the staffing sector (which attracts foreign companies seeking to engage talented Canadian workers) but at the same time offers protections to workers that may be in a vulnerable position.

The current framework requires a very nuanced assessment of whether a given engagement represents a contract of services (employment) versus a contract for services (independent). This language has largely evolved through case law and while it may be legally significant, in practice it creates a significant grey area that is exploited by unscrupulous hiring organizations.

Instead, the market requires a clear cut, dollar based line, below which all worker engagements constitute temporary employees, with an unequivocal requirement all the necessary payroll contributions. Above this threshold, workers and hiring organizations would be free to structure the relationship in any way that is mutually acceptable (including but not limited to temporary employment).

In order to be applicable across Canada, we are proposing that this dollar threshold be set as a multiple of provincial minimum wage (for example, 2X or 3 X minimum wages).