

Brief to the Standing Committee on Citizenship and Immigration

42<sup>nd</sup> Parliament 1<sup>st</sup> Session

Regarding the regulation of Immigration Consultants and *The Foreign Worker Recruitment and Immigration Services Act, The Statutes of Saskatchewan, 2013.*

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Submitted via email to the Clerk of the Committee  
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Dear Mr. Wrzesnewskyj and respected Committee Members:

Thank you for the opportunity to submit a brief on behalf of the Government of Saskatchewan respecting the regulation of Immigration Consultants. This submission will:

- Explain the purpose and structure of *The Foreign Worker Recruitment and Immigration Services Act (FWRISA)*; and,
- Clarify some matters concerning the FWRISA submitted in a previous submission to the Standing Committee.

#### Purpose and Structure

Saskatchewan's *Foreign Worker Recruitment and Immigration Services Act (FWRISA)*, 2013, is a statute providing for a unique model of protecting foreign workers and immigrants arriving in our province and ensuring their fair treatment related to employment recruitment processes. It governs employers of foreign workers in Saskatchewan, and the immigration consultants and foreign worker recruiters who bring foreign nationals to Saskatchewan.

FWRISA is similar to other consumer protection legislation with major components of:

- A director responsible for the operation of the Act;
- A licensing requirement for foreign worker recruiters and immigration consultants;
- A registration requirement for employers of foreign workers;
- An investigative and disciplinary function;
- A list of prohibited practices; and
- Codes of conduct for immigration consultants (adopted by reference) and foreign worker recruiters.

Consistent with foreign worker recruitment legislation in other provinces, a fundamental principle of the FWRISA is that employers must pay the cost of recruiting foreign workers – that individuals should be hired on merit, not their ability to pay. However, the FWRISA is unique in also recognizing that, very frequently, the recruitment of foreign workers and the provision of immigration consulting services to them are very highly integrated activities that are most effectively regulated under a single regime.

The integration of recruitment and immigration services can have negative consequences for foreign workers. In the past, it was common that employers using a third party foreign worker recruiter would not be billed for their services, while the third party charged the recruited foreign worker very costly “immigration consulting” fees that, in effect, also paid for the recruitment services received by their new Canadian employer. The potential to shift recruitment costs to foreign workers continues to exist. Of the 294 immigration consultants currently licensed under the FWRISA, 179 or 61 % also are licensed to provide recruitment services. Foreign nationals recruited by a licensee very often receive consulting services from the licensee or their firm.

Rather than regulate these intermingled activities in separate “silos” where the province regulates foreign worker recruiters and the federal government regulates their immigration services, Saskatchewan’s model regulates and investigates both activities together. In support of the principle that employers pay recruiting costs, the FWRISA requires that recruitment costs be clearly established in a contract with the employer and any immigration consulting services must be contracted separately with the foreign worker. The Act recognizes the potential conflict of interest inherent in providing services simultaneously to the employer and their foreign worker and requires disclosure to and consent from both parties. This approach provides more effective regulation of the employer pay principle and assurance of fair treatment of foreign nationals than two separate legislative “silos”.

### Particular Matters

Prior to enacting the FWRISA, the province carefully considered its constitutional authorities and the findings of Canadian courts concerning concurrent jurisdiction and the exercise of federal-provincial responsibilities. Saskatchewan is cognizant of federal paramountcy in immigration and has avoided legislative conflicts with *The Immigration and Refugee Protection Act* (IRPA). FWRISA certainly establishes additional requirements to those set by IRPA but the province has been careful to ensure the FWRISA does not conflict with or frustrate the intent of federal legislation. Saskatchewan has likewise avoided conflicts with the operations of the Immigration Consultants of Canada Regulatory Council (ICCRC).

In this respect, the Government of Saskatchewan would like to correct some assertions concerning the FWRISA made in an April 5, 2017 submission to the Standing Committee by Cobus Kriek, a member of the Immigration Consultants of Canada Regulatory Council. Under Issue 1 of his submission, Mr. Kriek describes the constitutional authorities of the provinces and the federal government with respect to immigration and alleges several conflicts of the FWRISA with IRPA and federal regulation of immigration consultants. This submission will not speak to the legal and constitutional arguments set forth by Mr. Kriek, other than to reiterate our confidence that the constitutional basis for the FWRISA is sound. It will however, clarify

inaccuracies in Mr. Kriek's submission that imply the FWRISA creates "a conflict in operation where the application of the provincial law will displace the legislative purpose of Parliament". These include:

- That section 22(b) of the FWRISA prohibits immigration consultants from receiving passports, police certificates or other official documents from clients. In actuality, the administration of the FWRISA allows receiving documents and property as needed in order for a licensee to provide services. "Taking possession or retaining" is only considered a violation where the licensee holds their client's property against their will or their best interests.
- That section 22(e) prohibits licensees from contacting their client. This provision is intended to deal with instances of harassment and, as indicated in the section itself, would only be pursued "after being requested not to do so" by the affected foreign national. This important distinction is not mentioned in Mr. Kriek's submission.
- That the adoption of the ICCRC Code of Professional Ethics by reference in section 11(2) creates an internal conflict between the FWRISA and its regulations. It is submitted that this conflict does not exist as the FWRISA, its regulations and its administration are compatible with IRPA and federal regulation of immigration consultants.
- That 27(e) and (f) conflict with ICCRC requirements concerning retainer agreements and maintenance of records. Consistent with provincial constitutional authority in a shared jurisdiction, Saskatchewan's legislation, regulations and administration may provide for additional requirements to those established by the ICCRC but they do not pose an irreconcilable conflict to compliance with ICCRC or other federal requirements.

Mr. Kriek's submission contains a chart that alleges a number of conflicts of the FWRISA with federal requirements. As in the above examples, very little detail and no specific examples of conflicts are provided in his submission. The apparent conflicts appear almost entirely to be based on misconceptions or inaccurate suppositions about the actual administration of the Act. They confuse the theoretical existence of potential conflicts between the province's administration of the FWRISA, or the decisions of the Director of the FWRISA, with the reality that there has been not actual instances of demonstrated conflict with federal regulation. Saskatchewan contends that the FWRISA is within the constitutional authority of the province, that no substantive conflict has occurred with federal legislation and that it is our intent to continue to administer the FWRISA in congruence with IRPA and ICCRC requirements.

It is also important to note that Saskatchewan's unique regulatory model has had effective results in the form of sanctions against employers, foreign worker recruiters and immigration consultants, including Registered Canadian Immigration Consultants. This has included suspensions and other sanctions against RCIC's that had not been dealt with by the ICCRC. A list of RCIC's whose right to practice in Saskatchewan has been suspended can be found at <https://www.saskatchewan.ca/residents/moving-to-saskatchewan/immigrating-to-saskatchewan/protection-for-immigrants-and-foreign-workers>.

The FWRISA acts in complementarity to the regulatory regime established by the federal government through the ICCRC. The federal Ministries consulted during its development

supported its creation and did not raise concerns of double regulation. It defines a provincial role in the protection of foreign nationals encompassing both the recruitment and immigration activities that bring foreign nationals to our province. This combined role is not available to federal regulatory agencies under our constitution and the Saskatchewan legislature chose to enact it in order to provide additional protections to a highly vulnerable group.