

Bill C-44 Division 21: Risks and Implications of the *Service Fees Act*

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Summary

This brief argues that the repeal of the *User Fees Act* and its replacement by the *Service Fees Act* in this omnibus *Budget 2017* bill eliminates meaningful consultations and thus risks fee increases that do not consider public policy interests and only focus on cost recovery.

The example of the two-step citizenship fee increase from \$100 to \$530 in 2014, following the granting of an exemption from the *User Fees Act*, demonstrates the risks:

- The *User Fee Act* exemption was part of the *Budget 2013* omnibus bill. It was only reviewed by the House and Senate finance committees, not the relevant substantive committees (CIMM and SOCI);
- While the first increase was discussed during review of Bill C-24 (*Strengthening Canadian Citizenship Act*), the second was not subject to any discussion given its announcement 14 December 2014; and,
- Consequently, the number of persons applying for citizenship has declined from 198,000 in 2013, to 130,000 in 2014, and to 92,000 in 2016, notwithstanding the assumption in the two *Canada Gazette* notifications of no decline.

This brief recommends the following amendments to Division 21 to ensure public interest considerations are taken into account:

1. Insert a provision that explicitly allows for public interest considerations, rather than just cost recovery, to be applied in fee setting; and,
2. Require that any proposed fee increases that effect the general public twice the annual CPI adjustment be referred in advance to the relevant Parliamentary committee for review.

Budget 2017 proposes to replace the *User Fees Act* of 2004 (check) with a streamlined new *Service Fees Act* that replaces what was an onerous and lengthy process with one that allows departments and agencies to increase fees with minimal transparency and consultation. The proposed *Act* also allows the reasonable measure of automatic fee increases tied to the consumer price index.

The government's rationale for the changes was that many departments chose not to increase fees as the time required given the lengthy outreach and consultation process involved, a process that only highlights opposition to fee increases. As a result, the gap between fees and service delivery costs continued to grow, resulting in a greater draw on general government funds.

However, while the *User Fees Act* consultation process and justification requirements may have been too onerous, the *Service Fees Act* goes too far by removing all meaningful transparency and consultations. It starts with the *Act* being part of the omnibus *Budget 2017* bill, meaning reduced parliamentary scrutiny, and continues with its consultation requirement being limited to minimal *Canada Gazette* notification requirements.

A case study for the possible abuse of these minimal requirements can be seen in the recent quintupling of citizenship application processing fees from \$100 to \$530. Originally set in 1994, the fee would have grown to \$150 in 2016 had automatic consumer price indexing been allowed.

The increase to \$530 was based on the estimated processing cost for adult applications, as determined by an internal departmental analysis in 2012. IRCC first obtained an exemption from the *User Fees Act* in *Budget 2013*, where it underwent minimal scrutiny in the House and Senate Finance committees and none by the *Citizenship and Immigration Committee*. In their testimony, officials contrasted the more substantive consultations of the *User Fees Act* and the lighter *Canada Gazette* process:

“You need to consult the users of the service, and for CIC that means many users. You also need to address the complaints. You do a fee proposal, and if there are complaints, you need to address them, which can take more time... That is why I say it depends on the scope of the users you need to consult and the outcome of the consultations. The regulatory process, however, also allows for consultation of the users [through posting in the *Canada Gazette*].”¹

The first increase to \$300 in February was announced alongside the Conservative government's Bill C-24, *The Strengthening of Canadian Citizenship Act*, and thus was subject to debate and discussion in both the House and Senate committees. The second stage was announced in the *Canada Gazette* just before the Christmas break on December 14, 2013, all but guaranteeing no one would notice at the time, and resulting in no debate.

The *Canada Gazette* notifications for both fee increases are revealing. They assumed that, for both fee increases, “the number of applications expected per year is not anticipated to fall with an increase in the fees” and that the annual number of adult applications will remain steady at 182,400.²

More than three years after IRCC obtained its exemption from the scrutiny of the *User Fees Act*, the number of applications has dropped — from 198,000 in 2014 (about the historical norm) to 130,000 in 2015 and 92,000 in 2016 — with fee increases being a major factor.

Had there been proper public consultations, this concern would certainly have arisen. The \$1,060 fee for a couple plus the additional \$100 per person ‘Right of Citizenship Fee’ brings the cost to \$1,260, plus \$200 per child — clearly too onerous for many newcomer families struggling to establish themselves in Canada. The historic Canadian immigrant-to-citizen model is seriously being undermined by these exorbitant fees.

Cost recovery needs to be balanced against public policy considerations, and I have previously argued that an adult citizenship fee of \$300, including the right of citizenship fee, would represent a reasonable balance, and one that would make citizenship more affordable and thus encourage all newcomers to apply for citizenship as soon as possible.

The low profile of *Canada Gazette* notifications enabled this fundamentally flawed assumption of no impact on the number of applications to pass unchallenged at the time.

Within one year, the justification changed from “Increasing the service fees for grant and resumption applications to reflect 100% cost recovery would have imposed too large a fee increase and too much hardship on applicants” in February (\$300) to close-to-full cost recovery in December: “This reduction in the subsidization aims to shift the cost burden to the user who benefits the most from the service.”³

Moreover, there were no consultations with respect to the second fee increase: “CIC received numerous media requests following the February 6, 2014, increase in the citizenship grant and resumption fees. In the months following the announcement, there was minimal to no media interest.”⁴ Again, the low profile nature of *Canada Gazette* notifications, combined with the timing, ensured that this was not noted and debated.

In contrast, the increase in passport fees went through an in-depth consultation process starting spring 2010: public consultations (both open and with key stakeholders), public opinion and market research, the proposed fee schedule made public one year before implementation, with further input permitted. The proposed fees were tabled in both Houses of Parliament and reviewed by their relevant committees before being approved in May 2012.⁵

The table below compares the respective consultation provisions of the two acts;

CONSULTATION PROCESS CONTRAST USER FEES AND SERVICES FEES ACT

User Fees Act 2004	Proposed Service Fees Act 2017
(a) take reasonable measures to notify clients, and other regulating authorities with a similar clientele of the user fee proposed to be fixed, increased, expanded in application or increased in duration;	(a) making it accessible to the public;
(b) give all clients or service users a reasonable opportunity to provide ideas or proposals for ways to improve the services to which the user fee relates;	(b) inviting interested persons and organizations to make representations on it, specifying a deadline for making those representations, providing information on the requirement of paragraph (c) and specifying the time limit for submitting a complaint under subsection 13(1); and
(c) conduct an impact assessment to identify relevant factors, and take into account its findings in a decision to fix or change the user fee;	(c) replying to any representations made by interested persons and organizations within 30 days after the deadline specified under paragraph (b).
(d) explain to clients clearly how the user fee is determined and identify the cost and revenue elements of the user fee;	
(e) establish an independent advisory panel to address a complaint submitted by a client regarding the user fee or change; and	
(f) establish standards which are comparable to those established by other countries with which a comparison is relevant and against which the performance of the regulating authority can be measured.	

This comparison between the process followed for passport and citizenship fee increases highlights the possibility for abuse by the government and officials in seeking and justifying fee increases.

Recommendations

While it is unlikely that the respective Finance committees will undertake a serious review of the proposed Service Fees Act, the following suggestions would reduce the possibility for potential government abuse of fee setting:

- a) Insert a provision that explicitly allows for public interest considerations, rather than just cost recovery, to be applied in fee setting. The Treasury Board guidelines for the *User Fees Act* do so, and this should be part of the *Service Fees Act* rather than relying on later TBS regulations;⁶

- b) Require that any proposed fee increases twice the annual CPI adjustment that affect the general public (e.g., citizenship, passport, park fees) be referred to the relevant Parliamentary committee for review should the committee so wish, rather than the after the fact reporting requirement in the proposed *Act*. (Private companies and organizations affected by government fees and regulations generally track *Canada Gazette* notifications); and,
- c) Ensure that TBS regulations and guidelines reflect these two points as good practices, even if the government chooses not to amend the Act.



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¹ See Senate National Finance Committee debate 21 May 2013, House Finance Committee 28 May 2013.

² *Canada Gazette*. 29 January 2014.

³ *Canada Gazette*. 12 December 2014.

⁴ *Ibid.*

⁵ *Canada Gazette*. 30 November 2012.

⁶ Government of Canada User Fees: TBS Guidelines. 30 May 2014.