

**Ministry of Finance  
Consultation Submission  
(Sept 28, 2017)**

The Association of Professional Canadian Consultants (APCC) is a not-for-profit organization that represents the interests of independent consultants who provide their services to government bodies, publicly listed companies, large and small private corporations and not-for-profit organizations across Canada.

Our membership is comprised of private individuals, many who provide their services through private corporations. Our members pay their fair share of taxes, they obey the laws of the land and they make positive, and in many cases, significant contributions to the well-being of those communities where they live, work and play.

We are extremely disappointed and very concerned that the Government of Canada, the Department of Finance and the Liberal Party of Canada have characterized our members who choose to conduct business through private corporations as “tax cheats.” This characterization is inaccurate, unwarranted and offensive, and must end immediately.

We believe that it is important that the Government understand the role independent contractors play in the labour market, their economic contributions and the need for Independent Contractors to organize their services under private corporations. We will also address proposed legislation on specific tax topics in the Department of Finance consultation paper that will greatly affect APCC’s members. This submission aims to provide the relevant information.

**[The Role of Independent Contractors in a Global Economy \(and what it means for Canada\)](#)**

APCC’s membership is comprised of mostly knowledge workers who are highly trained, often very specialized and well compensated for the services that they provide through private corporations. In our global economy, it is fact that the jobs within the knowledge worker sector are mobile. The rise of India to become one of the largest knowledge sector global hubs is evidence of this. Off-shoring is a very real threat to our knowledge workers sector here in Canada.

The trend towards Independent Contract engagements is the most significant and meaningful shift in Canadian labour markets is the last 20 years, and has been an overwhelmingly positive contributor to Canada’s tax base and innovation agenda. By all credible sources, this transition will only accelerate going forward according to McKinsey Global Institute in their publication “*Independent Work: Choice, Necessity and the Gig Economy*”, published in 2016.

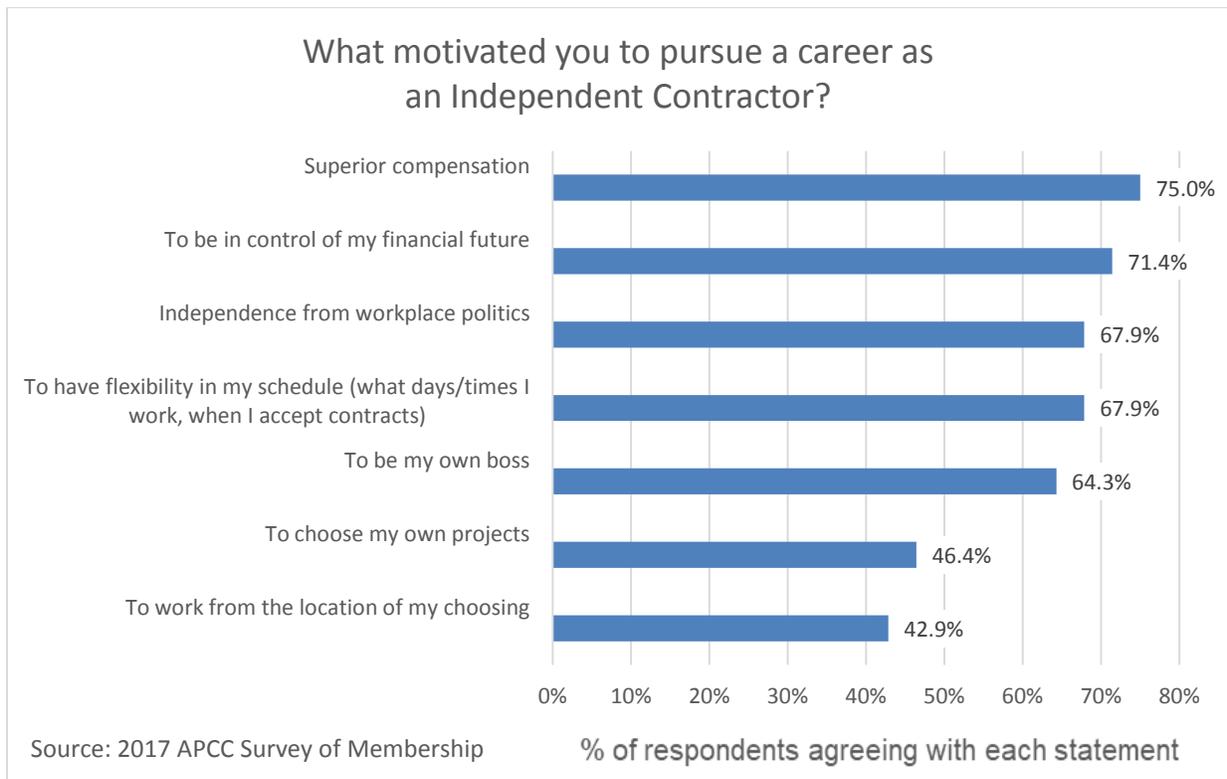
It is important to recognize the economic contribution that each Independent Contractor, who is a knowledge worker, makes to Canada’s economy. According to Enrico Moretti in his book “*The New Geography of Jobs*”, each knowledge worker job generates five service worker jobs - a ratio of 1:5. Compare this to the creation ratio of manufacturing jobs to service worker jobs of 1:1.2.

In a recent CBC interview, Minister Morneau indicated that the numbers of individuals who provide services through a private corporation has increased from 1.2 million to 1.8 million. Based on that information, the chart below illustrates the economic impact based on various income scenarios.

# of private corporations	Average Income of each Private Corporation		
	\$50,000	\$100,000	\$150,000
1.2 million	\$60 billion	\$120 billion	\$180 billion
1.8 million	\$90 billion	\$180 billion	\$270 billion

### Why Independent Contractors need to provide services through Private Corporations

Individuals tend to become Independent Contractors by choice. In a recent survey of APCC’s membership, 100% of respondents agreed with the statement that they were “Independent Contractors by Choice” and shared the following motivations for their decision:



Because Independent Contractors do not have the same standing as full-time employees, there are steps they must take to protect themselves. Setting up a Private Corporation is the most obvious. There are many reasons for doing so, but we will focus on two key factors.

## *1. Risk Mitigation*

### **Corporate Risk**

Most Independent Contractors are contracted by organizations who require contractual obligations in which the contractor warrants and guarantees services that the contractor provides. It is unreasonable to expect a private individual to take on that level of indemnity at the personal level, exposing all their personal and family assets.

### **Government Risk**

The Federal Government's determination of whether an individual is providing his/her services through a Personal Service Business is based on common law and a determination as to whether an individual is engaged in a "contract for" versus a "contract of" service. Such decisions are highly subjective and are commonly overturned on appeal. Performing a service through a Private Corporation provides clear evidence to the government that the individual is an Independent Contractor and not a dependent contractor.

## *2. Financial Management*

### **Income Continuity**

It's the nature of contingent work to be unpredictable. When one engagement ends, there is no guarantee that there is another engagement waiting. As such, Independent Contractors need to manage their income to offset periods when they are not working. There are no other mechanisms available to them as income supplements or replacements, as they do not qualify for the instruments made available to those in the workforce coming off full-time or even part-time jobs.

### **Retirement Planning**

Independent Contractors have limited options to put aside funds for retirement planning. Leaving money in a Private Corporation and investing it to create greater gains is one of few options. Like Registered Retirement Savings Plans and public or private sector pensions plans, those funds will be taxed at the time they are withdrawn.

Private Corporations are set up as a means to conduct business that helps individuals manage risk and manage financial benefits. They are not set up with the intent to "cheat" taxes.

## Impact of Proposed Legislation

### *Passive Investments*

Our understanding of the Government's position is that is that the Government is seeking to neutralize tax-assisted financial advantages of investing passively through a Private Corporation.

"Passive" is a very static term and does not fully reflect the business cycles of a corporation. In many instances, passive income in one fiscal cycle, could and often is invested in the business during the following cycle. Passive investment portfolios allow Private Corporations to:

- **Grow their business**, which may include investing in innovation and expanding domestic operations
  - Small business, largely Private Corporations, is the engine that drives the Canadian economy; accessing external funding for growth is difficult, so passive investments become even more important
- **Sustain the business** during periods of economic distress
  - Independent Contractors by definition are not full-time, salary-earning employees. The nature of their services is that there will be periods of time where their services are not required or they are not available to provide their services – for example, because of illness. As Independent Contractors, they do not have benefits plans, nor do they have access to government programs that would ease them through such periods
- **Provide for retirement** and retirement planning
  - Independent Contractors operating through Private Corporations typically do not have pensions or benefit plans afforded salaried employees. Passive investments allow them to plan for their retirement and for them to provide for and care for their families

The government should be incentivizing Private Corporations to invest even more of their passive investments into their business. Instead, the government appears intent on introducing changes that will stifle and discourage investment by penalizing Private Corporations.

### *Income "Sprinkling"*

Minister Morneau used an example of an individual with income of \$250,000 using a private corporation to "sprinkle" income to two children aged 18 and 21. It is a peculiar example in that the specific ages chosen are those when the children might be in university, as opposed to being in the work force. Where children are in the workforce, the sprinkling effect is frustrated by the fact that the working adult will have income, which although not on par with the "sprinkler's" income, will be the less impactful in terms of benefit.

The *Income Tax Act* is a well considered document. If an individual had children ages 18 or younger, the "sprinkling" effect would not apply due to the "Kiddie Tax" provisions in the Act. Under those provisions, dividend income paid to children, whose are younger than the commonly accepted age for adulthood of 18 years, accrues to the highest income level in the family and taxed at that person's rate.

Based on a review of 15,000 contract engagements, less than 5% of Independent Contractors have incomes that exceeded \$180,000 on an annualized basis. Of those approximately 750 Independent Contractors, we would suggest that very few would be in a family situation to “sprinkle” income through their private corporations.

While this change will not directly affect the majority of our members, we are concerned that the Government, in an ill-advised attempt to capture potentially one-time tax revenue of \$250 million from Private Corporations, is near-sighted and overlooking the potential damage their actions will have long-term, creating an unfavourable environment in Canada to invest in business. Less investment in the Canadian economy results in fewer opportunities for our members.

### Considerations

Small business, in the form of Private Corporations, have been and continue to be the main driver in Canada’s economic growth. It is to our detriment and the Government’s detriment to make investing in Canada more difficult, riskier and less rewarding. More investment creates more jobs which in turn provides government with great tax revenues, which allows it to sustain and grow programs that Canadians have come to expect from their government.

Independent Contractors providing services through Private Corporations play a significant role in the Canadian economy. Not only are we a vital cog in the growth of the economy, we also supply much needed resources and specialized knowledge to domestic and international organizations who choose to operate in Canada because of the competitive advantage we provide to them.

Independent Contractors providing services through Private Corporations are not being treated fairly by the Government. While the Government is quick to point out areas of the tax legislation that could be abused by Private Corporations, they don’t apply the same fairness argument towards salaried employees and ensure Private Corporations have the same access benefits.

Salaried employees have benefits and pensions. Will corporate contributions to pension plans be recognized as taxable benefits to the beneficiaries of those pension plan or will the Government provide Private Corporations with mechanisms to create benefit plans and pensions?

Salaried employees have steady income flow and when that is interrupted, they have access to government support programs. Is the Government looking to provide Private Corporations with the same access and support?

Salaried employees go to work. They are not expected to financially contribute to the growth of the business. Independent Contractors through their Private Corporations take on enormous financial risk to growth their business – there is no incentive to take on risk if there is no reward.

Salaried employees pay taxes. Employers collect taxes on behalf of the government and submit on a regular basis. Independent Contractors pay taxes too! However, the taxes are paid less frequently.

There is an opportunity for the government to normalize their tax flows from the Independent Contractors. A significant portion of engagement of labour under contract is facilitated by corporations such as Placement Agencies, Temp Staffing, etc. So, leverage those organizations to play the role of tax collector.

The Government needs to ensure that Independent Contractors providing services through private corporations are treated fairly. A comprehensive review of how taxation and government programs such as CPP and EI can be applied on a much more equitable basis consistent with salaried employees would be a good start.

### **Beyond Private Corporations – Making business easier for Independent Contractors**

Independent Contractors, especially knowledge workers, are acutely aware that we live, work and compete in a global workplace where the mobility of jobs is a recognized fact of life. We are also very aware that the clients our members support, receive frequent solicitations in which they are promised easy access to a broad base of qualified knowledge workers at low cost outside of Canada.

The trend towards contract labour engagement is undisputable. The threat of job mobility within a global labour force is real and it is happening. Will Canada benefit from job mobility or will it be harmed?

Instead of creating a hostile environment for small business, Private Corporations and Independent Contractors, the government should seek to do the opposite. The government needs to demonstrate through their actions and their tax legislation that Canada is a welcoming place for investment, innovation and knowledge. For those companies and people that choose to come to Canada or those that choose to remain in the country, the message must be clear - they will be rewarded, not unfairly taxed for their efforts and success.

Canada has a unique opportunity to make our country a world leader as a supplier of Knowledge Worker Services. A well-considered strategy, built in collaboration between the federal and provincial governments, can secure Canada's economic future and leadership in that market.

For those that seek security through the provision of their services under contract, we would like to see changes in legislation that would provide clear guidance to Independent Contractors and those clients that we serve. The following suggestions are only few that we believe will help in this regard.



### ***Introduction of fact-based means of making a contract for/of decision***

By enhancing the provisions of common law with this mechanism, the government sets an income level and removes the subjectivity that current exists. Below the income level, the default is an engagement relationship to one of employee (with the option to request an exception) and above the specified income level, the individual can make a statement of intent and that will become the default.

### ***Pre-Classification***

Assessments, as they are currently conducted, create uncertainty for both Independent Contractors and clients. Not only is the process ineffective and inefficient, it is open to appeals that are costly and time consuming. Individuals and companies should not be left in limbo by the government. Providing a level of certainty with the option to revisit is a viable option and de-risks the process for both Independent Contractors and for companies. With pre-classification, the guidance could be a simple *“Below this hourly rate, you are an employee. Above this hour rate, you may be a contractor if you make the proper declarations.”*

### **Canada: Becoming a world leader in Knowledge Worker Services**

The Government of Canada cannot stand by and choose to do nothing. Corporations will make choices. If it is not clear to them that Canada offers competitive advantages and a pro-business environment, they will either choose not to come to Canada or move their existing work out of Canada. For Canadian business, they too may choose to move their business elsewhere. Governments cannot continue to pursue their current course of action with persecution, prosecution and demonization of the private sector.

The choice is clear. Canada can and must become a leader in global knowledge worker services. Governments at all levels must create a business-friendly environment that attracts, welcomes and retains companies willing to invest in Canada. Their investments will mean more opportunities for salaried employees and more opportunities for Independent Contractors.

## About APCC

The Association of Professional Canadian Consultants (APCC) is a not-for-profit professional association committed to promoting the interest of independent contractors (IC) in Canada by providing a forum for idea exchange, professional development and industry advocacy, as well as membership services.

### *Our Mission*

- Be a credible voice providing information on the Independent Contractor community in Canada
- To provide education to the Canadian Independent Contractor community, members of government and our broader society stakeholders on trends and developments in the Canadian market
- To serve as a hub for government advocacy on issues of interest to the Independent Contractor community in Canada
- To help assist independent business members in presenting a united front on government issue

### *Our History*

The APCC was originally founded in 1985 as the Association of Professional Computer Consultants, and was conceived as an organization to support the emerging trend of information technology workers choosing to operate as independent small consulting businesses, accepting for on a contract basis.

At that time, these small businesses were not a widely recognized part of the Canadian economy, and many typical services were just not available to this first generation of independent contractors. Access to cost effective health and disability insurance was one such service, and as a founding issue, the APCC organized to develop a solution that would meet the needs of association members.

Over the years the APCC has evolved to be an effective voice on number of critical issues facing the independent contracting community, developing research and advocacy on key issues such as application of retail sales tax, reclassification of independent Contractors as Personal Services Businesses, and ensuring equal access to Social Security.