

## BACKGROUND:

Dated January 16, 2009, Updated March 8, 2009

For: CCLS Directors' Interim Working Session Jan. 31/Feb. 1, 2009

Labour Mobility – Agreement on Internal Trade (AIT) Chapter 7 (LM)

### Information Gleaned from Presentations and Correspondence from Government Sources:

#### The Agreement on Internal Trade:

- **Agreement on Internal Trade**, this Interprovincial trade agreement, was signed **1994-95** by all First Ministers
- **Chapter 7 – Labour Mobility**, to enable any worker who is qualified (i.e. *licensed, certified or registered by a regulatory authority*) in a province/territory to be granted access to employment opportunities in their occupation in other P/Ts. It is intended to eliminate barriers and achieve mutual recognition of qualified workers across Canada.
- Governments did not set a deadline at first, but in 1999, committed to ensure, by July 1, 2001, full compliance with the labour mobility provisions of the AIT. This is when the **Surveyors Labour Mobility MRA** was negotiated.
- Continued existence of labour mobility barriers resulted in Trade Ministers agreeing in September 2006 “to establish a **new deadline of April 1, 2009**, to ensure compliance by all regulatory bodies with the labour mobility provisions of the AIT”
- Governments have now **amended Chapter 7** so that after April 1, 2009 mutual recognition exists unless governments approve an exception. Each province/territory will establish a process for review and approval of exceptions to labour mobility.
- A **transitional period of 2 years** will be allowed to complete the implementation of the amended Chapter 7. (This statement has been questioned by government representatives.)
- Regulatory bodies are required to provide:
  - Practices that are transparent, objective, impartial and fair
  - Information that is clear and understandable and timely
  - Publicly available information on registration requirements and review processes

#### Summary of Changes:

- Provinces/Territories agree to mutually recognize qualified workers of other P/Ts without any additional re-training, re-testing or re-assessment.
- Mutual recognition exists unless governments approve a legitimate objective for maintaining an additional requirement. Any additional requirement should be linked to demonstrated differences in occupational standards or scopes of practice.
- Any additional requirements must be listed on a public Website. The list of additional requirements will be reviewed annually by Ministers.
- January 1 was the deadline for amendments to the AIT, April 1 is the deadline for additional requirements to be listed. According to some sources, August 1 is the deadline for implementation of labour mobility.

#### Mutual Recognition of Qualified Workers:

- Qualified workers (i.e. those licensed, certified or registered by a regulatory authority) from other jurisdictions are recognized without any material additional re-training, re-testing or

re-assessment. No additional requirements imposed on the worker and no need for individual case-by-case assessment.

- **A worker can still be required to:**
  - Demonstrate **local knowledge** (e.g., jurisprudence), as required, and of **language proficiency** (if not already demonstrated)
  - Provide **proof of good character** (e.g. criminal record checks, references, proof of good standing)

#### **Additional Requirements:**

- Additional requirements are any material measures that a jurisdiction (or its regulatory authority) imposes on qualified workers from other jurisdictions and include, but are not limited to: examinations; additional education/training; or practice hours.
- Additional requirements will be listed by each government in an open and transparent manner, will be reviewed annually, and may be disputed by another government. For professions with no additional requirements listed, mutual recognition is understood to exist. The AIT has sections dealing with dispute resolution and non-compliance by governments.
- Any additional requirement must be linked to demonstrated differences in occupational standards or scopes of practice.
- Each jurisdiction must demonstrate why an additional requirement is necessary to achieve a legitimate objective and that it is not a barrier to mobility
- Chapter 7 currently has language respecting legitimate objectives. Categories are:
  - public security and safety
  - public order
  - protection of human, animal or plant life or health
  - protection of the environment
  - consumer protection
  - protection of the health, safety and well-being of workers
  - provision of adequate social and health services
  - programs for disadvantaged groups

#### **Information from Association Discussions with their Governments:**

Manitoba set January 1<sup>st</sup> as a deadline for applications for exceptions to labour mobility. Alberta set the end of January, and Ontario set February 2 as their deadlines for such applications. The Newfoundland and Labrador government did not inform the ANLS about requirements until the association made first contact with them.

Some of the strongest wording that has been circulated by the associations is from the Manitoba government, which summarizes the AIT objective as to “Minimize exceptions to full labour mobility to those strongly identified and justified as required to meet a legitimate objective. If a significant difference in scope of practice or occupational standards exists between provinces/territories there may be an opportunity to maintain additional measures, if the additional measure can be strongly justified as required to meet a legitimate objective, such as the protection of public health or safety. However, please note that, to ensure full labour mobility, all Premiers have committed to approve as few exceptions as possible to ensure full labour mobility.

In conversation with their government, ANLS was informed that the Premiers do not want any exceptions. Exams can only be on local law/jurisprudence and can only be a maximum of 3-4 hours, there can be no face-to-face interviews, and the process must be quick, within days if possible, to examine and certify anyone transferring.

The AOLS is pursuing a ruling that a requirement for a demonstration of knowledge in local jurisprudence can be considered 'non-material' and hence allowed similar to the BC/AB MRA under TILMA without its consideration as an additional requirement and listed as an exception.

In Nova Scotia, most of the discussion has surrounded the proposed fair access legislation and there has been little specific talk about the changes to the AIT.

The SLSA has been in contact with their Labour Mobility Coordinator and initially were left with the distinct impression that there wasn't a whole lot more required of the survey profession in Canada than what was ready being done under the MRA.

In contrast, ABCLS has been given notice by their government that some of the requirements permitted under the current AIT will not be permitted once the new agreement is in place. ABCLS has also been told that an exam on local jurisprudence of less than half a day is non-material and falls under 706(3)(f) and doesn't require the filing as an additional requirement under a legitimate objective.

It does seem clear that it is the considerable regional differences regarding what the associations currently do to test local knowledge under the current MRA that will call the profession into question under the revised AIT. There are a wide variety on number and length of exams, there are significant differences in what is included in those exams and labeled local knowledge, there are some associations that require 'projects' and others that do not, and there are some associations that require interviews or oral exams.

### **Information from various sources on the potential allowable requirements:**

It is generally thought that the current situation with multiple examinations, face-to-face interview or oral examination, projects, and long wait periods for local knowledge examinations (6 to 12 months), will not be allowed to continue.

It has been suggested that all associations need to work towards half-day examinations focusing only on local jurisprudence by compiling exam questions that can be chosen randomly to set a single exam available on demand, using the ABCLS/ALSA formats as templates.

The position of provincial/territorial governments on examinations on local knowledge does not seem consistent or clear. It can be argued that a local knowledge examination is in the same category as proof of language proficiency and good character, and is not an additional requirement. AOLS is making this argument to their government and ABCLS has been told that a single half-day exam on local knowledge is 'not material' and does not require listing as an additional requirement. Whether this designation is because of the content of the examination (local jurisprudence) or the length (half-day) or both, is not entirely clear.

Any requests for additional requirements must be well documented with specific references to one or more of eight specific areas of consideration listed in the AIT (see above). Exceptions can be requested annually should deficiencies such as very low standards in one jurisdiction become apparent. This is a guard against forcing standards to the lowest common denominator.

Although not defined within Chapter 7, it might be expected that the TILMA agreement between surveyors in BC and AB, and a similar pending agreement between Ontario and Quebec, will provide a precedent for the rest of the surveying profession i.e. maximum examination length of 3-4 hours, only be on local law/jurisprudence, no face-to-face interview or oral exam, process to examine and certify applicants must be quick, within days if possible.

### **Companies and corporate ownership restrictions**

This is an unknown. Some have stated that this is not a concern of Chapter 7 which is only concerned with individual mobility, but others have noted that the broader AIT, and TILMA do address trade and investment. None of the associations have reported any specific direction from their government at this time, but several have reported that it is on the horizon.

### **Issues for Association Consideration:**

As outlined in Chuck Salmon's report to the ANSLs Annual meeting, and expanded somewhat here, the following needs to be considered by each association, discussed with their governments, and discussed amongst the associations. Inter-association communication and a consistent approach is important and the CCLS facilitated Labour Mobility Monitoring Group is providing the venue to the associations:

- Will additional requirements linked to legitimate objectives be accepted by the provincial/territorial governments?
- Is a half-day jurisdictional exam feasible to the governments, as a non-material requirement or a material requirement with a legitimate objective?
- Is a half-day jurisdictional exam feasible for the associations to deliver?
- Can and will the associations rely on ethics and if so to what extent? This will inform how far additional requirements are pursued and what will be included in the examinations if allowed. It may also inform association policies and processes with respect to a code of ethics and peer review for all members in the future.
- Can the governments and the associations make this work consistently across the country?
- Will exams be available once/twice per year or on demand? What will be required by governments and what is feasible for associations?
- Is this lowering the bar or recognizing credentials? Conclusions at the association level on this issue may inform future discussions with respect to entry requirements and harmonization efforts for the profession.

### **Current Activities and Next Steps:**

The Associations are reviewing and comparing their requirements as set out in 2001, coordinated by the CCLS Labour Mobility Monitoring Group.

Associations are reviewing and comparing their current communication and appeal processes for labour mobility applicants, coordinated by the CCLS Labour Mobility Monitoring Group.

CCLS is seeking government funding to support improved facilities for labour mobility for the profession. The application is currently under consideration by HRSDC. A copy of the application is available on request. The funding, if it is approved, will be available in April 2009 at the earliest.

Associations are individually determining requirements for compliance according to their government's interpretation of AIT, including identifying legitimate objectives and additional requirements if any, and sharing this information through the CCLS Labour Mobility Monitoring Group.

### **Additional information:**

Mutual Recognition Agreement that was signed by all associations. <http://www.ccls-ccag.ca/mobility.htm#mutual-agreement>

Amended Agreement of Internal Trade, Chapter 7 (attached)

Recent Labour Mobility Monitoring Group Documents <http://www.ccls-ccag.ca/memberfiles-committees.htm>