

Labour Mobility Monitoring Group Report - Addendum September 2008

Background

As noted in the report, Sarah Cornett attended a presentation and panel discussion in Ottawa on September 3, 2008 arranged by Labour Market Integration Human Resources and Social Development Canada and report to the National Association Forum later that week. According to the invitation, "The purpose of the meeting was to review amendments to Chapter 7 of the Agreement on Internal Trade (AIT) and discuss potential implications with particular emphasis on how these changes will affect regulated professions following the April 1, 2009 compliance deadline." This addendum reports on the information presented and issues raised at that forum

Attendees

The panel for the presentation included representatives of Human Resources and Social Development Canada (HRSDC), Industry Canada, and Health Canada at the level of Director General, Director, Special Advisor, and Senior Policy Advisor.

The invited participants included representatives of national bodies representing various professionals including lawyers, engineers, architects, planners, realtors, and others.

Changes to the Agreement on Internal Trade, Chapter 7: Labour Mobility

The presentation explained that the objectives of the labour mobility chapter will stay the same but that the means to achieve the objective will change.

The original AIT did not set deadlines for compliance and that voluntary compliance has not achieved the levels of labour mobility and mutual recognition that the Premiers are currently committed to.

The original AIT focused on process where the amendments will focus on objectives.

The dispute settlement procedures are being strengthened to include monetary penalties for non-compliance.

Summary of changes:

- Provinces/Territories agree to mutually recognize qualified workers of other Provinces/Territories 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
- As for transparency, any additional requirements must be listed on a public Website. The list of additional requirements will be reviewed annually by Ministers.

For professions with no additional requirements listed, mutual recognition is understood to exist.

Changes to the AIT are currently in draft format and must be refined through several layers of bureaucracy and ratified by the council of the federation (First Ministers).

There are 51 regulated professionals and an equal number of regulated trades in Canada that are all subject to the AIT. It was noted in the presentation that there is full labour mobility on about 65% of these, which leaves a lot left to do.

These two facts mean that the scramble by bureaucrats to implement the wishes of their political leaders in a very short timeframe (see below) is resulting in some issues of uneven communication, differing interpretations, and variable processes.

HRSDC is currently working with Provincial/Territorial counterparts, through joint committees, on the following:

- Actual wording of the amendments to the AIT based on consultations such as the ones
- Consistent communication pieces (the PPT presented in Ottawa on Sept 3 was still 'draft')
- Clear and consistent interpretations of the general political direction received to date.
- Consistent processes and templates for reporting and considering of additional requirements by the professions to the Provincial/Territorial governments and by governments to the Council of the Federation.
- Funding applications.

It was noted that as soon as a federal election is called, HRSDC will have to stop public consultations because any such contact between bureaucrats and the public is considered 'campaigning'.

Onus on the Province/Territory

Each Province/Territory must demonstrate why an additional requirement is necessary to achieve a legitimate objective and that it is not a disguised barrier to mobility. It is the Province/Territory that will be the subject of a dispute resolution panel should an objection be made and the First Ministers that will report to the Council of the Federation on their Province's/Territory's level of compliance.

Onus on the Regulatory Body at the Provincial/Territorial Level

Because the onus is on the Provincial/Territorial governments, each of those governments will be asking each regulatory body in their jurisdiction whether it is in compliance with the AIT. This will include reporting on any additional requirements and demonstrating that they are necessary to achieve a legitimate objective and do not cause a barrier to full labour mobility.

Timeline

- Chapter 7: Labour Mobility to be amended by January 1, 2009
- Amendments to come into force on April 1, 2009
- Amendments will result in mutual recognition of occupational credentials between all Provinces/Territories by August 1, 2009.

Terminology

Mutual Recognition exists when qualified workers (i.e. licensed) from other jurisdictions (including grandfathered and internationally trained) are recognized without any additional re-training, re-testing, or re-assessment. It means no additional requirements and no need for case-by-case assessment.

Additional Requirements are any measure that a Province/Territory or its regulatory authority imposes on qualified workers from other Provinces/Territories. This includes but is not limited to examinations, additional education/training, or practice hours.

Legitimate Objectives are defined in the original AIT and include protection of the public, protection of the consumer, public health and safety, etc.

Some Interesting Discussion Points

Scope of Practice: If there are specific differences in scopes of practice between two jurisdictions then retraining or reassessment for the additional scope of practice is a legitimate additional requirement. However, the additional requirement must be readily available and must be limited to only the difference in the scope of practice. The example given was that pharmacists in BC are allowed to give intramuscular injections of various kinds such as flu vaccines while those in other jurisdictions are not. BC therefore may require assessment or training in intramuscular injections for out of province pharmacists.

Readily Available: If an additional requirement is necessary, the jurisdiction must ensure that it is readily available (i.e. in a specific and timely manner) and does not cause undue delay to licensure. In the pharmacy example, it would not be acceptable to require a year long pharmacy course part of which covers injections and it would not be acceptable to have assessments only a few times per year. At one point in the discussion it was suggested by an HRSDC representative that any requirement causing more than one day delay in mutual recognition would constitute a significant delay and would need to be justified as necessary to a legitimate objective.

Multiple levels of Certification/Licensure: Many professions have situations where different levels of licenses exist and it is very difficult to compare between jurisdictions. One example given was the paramedics who apparently have more than 40 different levels of certification nationally. The other example was a teacher in Ontario who is certified to teach high school level history whereas a teacher in another province is certified as a high school teacher without any specific subject specialty.

Licensure of Firms vs. Individuals: The architectural representative noted that they have issues where as a individual there is good mutual recognition but in reality limitations imposed on firms cause mobility issues. The example of BC requiring a firm to have a certain percentage ownership by BC licensed architects in order to operate in the province which limited the ability of a BC licensed architect working in an ON based private practice to do work in BC. This caused quite a reaction from the HRSDC representatives who noted that this could be construed as a disguised barrier to mobility.

Mutual Recognition Agreements, such as the one signed by the surveyors' associations, were the tool of choice of the original AIT and were used to demonstrate compliance with the AIT by a profession. The recent events will mean that compliance with the AIT will be demonstrated only through actual dialogue between the profession and government and the existence of an MRA will not be enough.

Funding

Funding is available to support discussion and consultation between provincial/territorial regulatory bodies on mutual recognition similar to the funding that CCLS accessed in 2000 for the MRA process. On the order of \$40K-\$50K was cited as average.

Funding would probably be available to support harmonization of standards such as the work being done on the syllabus development.

Funding may possibly be available to assist regulatory bodies in making additional requirements that are accepted as necessary to achieve legitimate objectives readily available i.e. developing examinations available in demand.

Contact was made with the Director and Director General at HRDC in charge of funding and application and further information should be received by the CCLS office very soon.

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