

## MRA Process under NAFTA

The NAFTA sets out the process by which a sub-agreement (Mutual Recognition Agreement MRA or Mutual Recognition Document MRD) is annexed to the main agreement.

Annex 1210.5.1 deals with applications to the competent authority for a license. It precedes discussion about the provision of recommendations on mutual recognition and is intended to be a self-standing provision, not dependent upon an MRA.

Annex 1210.5.2 (page 12-8) encourages “relevant bodies” (national survey organizations, called RSOs in the MRA) to develop an MRA and it deals with Development of Professional Standards. This paragraph ends with the words “provide recommendations on mutual recognition to the Commission”. This appears to be the authority to develop a Mutual Recognition Agreement, (MRA). Standards in Canada, are developed by the provincial associations in cooperation with CCLS. NSPS and its MO's farm this job out to others (NCEES for example, but with NSPS membership on the committee developing the standards.)

Section 1210.5.3 sets out the ALLOWABLE standards. (“MAY be developed”). These are the ones that, if developed, will not affront the spirit of the NAFTA, which is to ensure, *interalia*, that measures do “not constitute a disguised restriction on the cross-border provision of a service” (Article 1210).

Section 1210.5.4 outlines the next steps (i.e.) the commission reviews it to determine that it is consistent with the NAFTA and encourages the competent authorities to implement the MRA.

The process is, clearly:

RSO (CCLS, FECITEUM or NSPS)  $\rightleftarrows$  International NAFTA Commission  $\rightleftarrows$  competent authority for implementation.

There are only three bodies identified within the process outlined in the NAFTA for professionals. They are:

- Parties - the nations that signed the agreement (i.e.) Canada, USA, Mexico.
- Relevant Bodies - also referred to as “relevant professional bodies” - (i.e.) CCLS, NSPS, FECITEUM A.C. See Annex 1210.5, Section B, par. 3 and Section C, par. 1, 2, 3, & 4. Although these two sections refer to lawyers and engineers, the addition of the adjective, “professional”, clarifies the meaning of “Relevant Bodies”. Surveyors would look to engineers as a sufficiently parallel profession in order to impute interpretation for our own profession.
- Competent Authorities - authorities established by law capable of performing legal functions, in this case, licensing. (i.e.) the Canadian professional associations/corporations/Ordre, the State Licensing Boards (not NCEES) and the Mexican State and Federal governments.

Article 1213, Definitions states; “For purposes of this Chapter, a reference to a federal, state or provincial government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government.”

Conclusion:

Relevant Bodies make the agreement (MRA). Competent Authorities, (i.e.) state licensing boards, are encouraged to implement its recommendations. The Boards are obliged to lessen the impediments to free trade because, being government bodies, they fall under the hierarchy and paramountcy of law, which is: Nation -> State -> government or non government Competent Authorities. (See NAFTA Legal Opinion California.doc)