

# Memorandum

**To:** Saskatchewan Chamber of Commerce (SCC)  
**From:** Patrick Snider  
**Date:** April 19<sup>th</sup> 2017  
**Re:** Impacts of CFTA on Labor Mobility

## Background:

In April 2017, the Canadian federal, provincial and territorial governments signed the Canadian Free Trade Agreement, or CFTA. These negotiations were originally launched as of December 2014, in an effort to modernize trade within Canada<sup>1</sup>. This agreement covers a range of issues, including movement of goods, regulatory cooperation, government procurement, environmental protection, and labour mobility<sup>2</sup>.

The main innovation under the CFTA as opposed to the Agreement on Internal Trade (AIT) which it replaces is that the CFTA will by default apply to all areas of trade, barring an exemption, rather than requiring a positive inclusion through the agreement<sup>3</sup>. This “Negative List” approach should ensure that the provisions of the trade agreement remain relevant for Canadian businesses in emerging economic sectors. This agreement also has expanded provisions for covering the service economy, which represents roughly 70% of Canada’s GDP.

Internal trade represents about one-fifth of Canada's annual GDP, or \$385 billion. It also accounts for almost 40 per cent of provincial and territorial exports. According to the Bank of Canada, removing interprovincial trade barriers could add up to two-tenths of a percentage point to Canada's potential output annually. This is roughly comparable to the projected economic benefit from the Canada-European Union Comprehensive Economic and Trade Agreement (CETA)<sup>4</sup>.

## Provisions Related to Labor Mobility

A number of provisions within the agreement directly relate to mobility of labour, services and interprovincial recognition of qualifications.

Article 308 deals with Licensing, Qualification Requirements and Procedures<sup>5</sup>. Firstly, this section requires that licensing procedures are no more burdensome than necessary, nor delay the speed of delivery of a service, based on meeting the relevant qualifications. It also sets service standards for obtaining licensing, such as recognizing both electronic and paper applications, providing status notifications, and informing applicants about incomplete submissions.

**Impact:** Under section 308, the provinces and federal government commit to harmonizing licensing procedures to increase the speed and predictability of applications. Many of the terms depend on interpretations of terms such as “no more burdensome than necessary”, and specific measures around determining which qualifications are relevant. Overall, the service standards should ensure that companies have a more predictable process for accessing licensed professionals, and improved

<sup>1</sup> <http://www.newswire.ca/news-releases/canadian-free-trade-agreement-finalized-618660513.html>

<sup>2</sup> pp.i-ii <http://www.ait-aci.ca/wp-content/uploads/2017/04/CFTA-Consolidated-Text-Final-English.pdf>

<sup>3</sup> Canadian Free Trade Agreement, Highlights of Canada's New Free Trade Agreement, April 7<sup>th</sup> 2017, <http://www.ait-aci.ca/wp-content/uploads/2017/04/CFTA-general-backgrounder.pdf>

<sup>4</sup> <http://www.newswire.ca/news-releases/canadian-free-trade-agreement-finalized-618660513.html>

<sup>5</sup> p.12 <http://www.ait-aci.ca/wp-content/uploads/2017/04/CFTA-Consolidated-Text-Final-English.pdf>

service in terms of speed of processing, feedback about applications and options for submitting applications.

Chapter four relates to regulatory conciliation around both normal regulations and issues related to labour mobility, and under that chapter Article 403 commits all parties to an ongoing process of regulatory reconciliation. This commits parties to gradually harmonizing their existing regulatory systems with one another, as well as to consulting one another on any future regulatory developments.

These will be shared and harmonized through the Regulatory “Reconciliation and Cooperation Table” (RCT), consisting of appointed representatives chosen by the First Minister of each party, with appropriate authority to participate on the RCT<sup>6</sup>.

**Impact:** The RCT has the potential to have a significant impact on harmonization and reconciliation of regulations across Canada. Owing to the substantial exemptions in the existing agreement, the immediate impacts are likely to be somewhat limited, but due to the overall negative list approach the impact of this is more likely to be seen in the long term.

Articles 700 through 708, or Chapter Seven, deal with Labour Mobility in Canada<sup>7</sup>. According to the agreement, “The purpose of this Chapter is to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility within Canada and, in particular, to enable any worker certified for an occupation by a regulatory authority of one Party to be recognized as qualified for that occupation by all other Parties”.

The regulations under Chapter seven apply to any kind of measure adopted by any party to the agreement that relates to either residency requirements for accessing employment or occupational qualifications, certification requirements, and occupational standards. It does not apply to measures such as social policy measures like employment insurance, or requirements around official languages<sup>8</sup>.

This means that provincial governments cannot require that any worker actually reside in their province before permitting them to bid on contracts, get certified to perform their occupation, or be hired for public service positions, and that those occupational standards should be the same across provincial borders.

**Impact:** Overall the impact of this chapter is to increase the mobility of workers, but it acknowledges that certain requirements will remain in place in terms of preserving provincial level bodies for certification. The main changes mean that overall requirements around mobility should be reduced, but in the case of regulated professions there will still be existing, albeit lower barriers. There are expanded protections for workers operating under Red Seal certification, and those should reduce barriers further for professionals who work under those fields.

Occupational certifications covered by regulatory authorities are now to be recognized by authorities across provincial borders without requiring additional training, certification, or testing. Exceptions to this regulation only exist when there is a material difference between the occupational requirements in either jurisdiction.

Otherwise, regulatory agencies may only require that workers provide an application processing fee, obtain insurance, post a bond, undergo a criminal background check, provide evidence of good character, demonstrate knowledge of the profession relevant to the area in which it is practiced, or provide a certificate from the region in which they are already accredited. All of these requirements are subject to oversight to ensure they are similar to requirements placed on employees already practicing that occupation, and do not constitute a restriction on labour mobility.

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<sup>6</sup> P.30, *ibid*.

<sup>7</sup> pp.85-90, *ibid*.

<sup>8</sup> p.85, *Ibid*.

Occupational standards are covered in article 706, which permits provinces to establish any occupational standards that they consider necessary, but which commits provinces to participating in efforts to harmonize those standards, such as through programs like “Red Seal”, National Occupational Analysis, as well as other interprovincial or international standards.

The development of new occupational standards may be pursued, but participants must offer other jurisdictions the opportunity to participate in the development of those standards.

**Impact:** The intended impact of these measures is to ensure that licensing differences are minimized between jurisdictions, and that mobility is subject to the fewest delays possible. Overall occupational standards have a commitment to greater harmonization, and over time this should make the licensing and accreditation systems more closely aligned between provinces.

Articles 707 and 708 deal with legitimate objectives for labour market mobility, and the responsibilities of the Forum of Labour Market Ministers (or FLMM, also referred to as the “Forum”), respectively. Under the section for legitimate objectives, parties are required to both adopt the most minimally-restrictive measures in order to support labour market mobility, as well as demonstrate that material differences in scope and practice of an occupation between jurisdictions justifies any difference in certification. These differences are to be submitted to the FLMM, who will publish a list of measures taken.

Overall, the Forum is tasked with responsibility for actually implementing and ensuring ongoing adherence to the measures in Chapter 7, to develop the framework for implementation of article 706 (Occupational Standards), form the notices required under article 707.3 and 707.4 (relating to legitimate measures around labour market mobility), and to annually produce a report on the operation of this Chapter and to submit that to the committee.

That annual report is required to contain information on assessments of the steps taken to harmonize and promote labour market mobility, list measures taken under section 707.3, and summarize any disputes that have arisen as well as the resolutions to those disputes. It may also establish working committees to assist in implementing any work plans, consisting of the Parties (FPT governments), regulatory agencies, and other non-governmental bodies.

**Impact:** These articles provide force to many of the mechanisms, though they depends somewhat on the activity level of the FLMM itself. That organization will gain significant importance as a forum for sharing information, establishing harmonization under the previous chapters, and other measures related to labour market mobility.

#### **Notable Exceptions related to labour market mobility:**

The CFTA contains a notable number of exceptions related to a number of issues. An exhaustive list would be very long, but there are some general exceptions that apply to industries in all regions. These include any measures related to aboriginal people, national security, tobacco control, language, culture, gambling, and passenger transportation<sup>9</sup>.

Most notable from the perspective of training and labour mobility are the general exemptions to the overall agreement for the areas of language, culture, and social services. Public education also remains an area in which provinces may establish qualifications and limitations on access as they see fit, to the extent that it is a social service established for a public purpose. Language and cultural industries are generally exempt from the agreement as well, across all regions, though language requirements are subject to not being a “disguised restriction on trade”.

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<sup>9</sup> pp.91-94, *Ibid.*

**Impact:** While a range of exemptions exist in numerous categories, most of them do not apply to issues related to labor mobility. Overall, harmonizing qualifications will be an ongoing process, and involvement by Chambers of Commerce at the level of the FLMM will be required to ensure that attention remains on bridging those differences.

**Dispute Resolution:**

The CFTA contains a number of dispute resolution mechanisms, covered under Chapter 10. Not only are these mechanisms open to parties to the agreement, but there is a right to private proceedings against government policies which may impact on trade, under Part B of the dispute resolution mechanism<sup>10</sup>. This should create additional pressure on governments to pursue harmonization under the previously listed measures around labour mobility, given a larger number of potential plaintiffs from the various economic sectors that may be affected. These resolution mechanisms have the power to offer restitution in various forms, both financial and through requiring the harmonization of regulations. The degree to which these may impact on issues related to labour mobility remains to be seen, however.

**Impact:** The creation of dispute resolution mechanisms creates a significant new avenue for potential remedies of conflicts created by non-adherence to the policies under the CFTA. This can serve to improve labour market mobility by creating additional pressure on parties to the agreement to harmonize their labour market regulations.

**Summary of Changes:**

The CFTA overall represents an important step towards harmonizing occupational qualifications in Canada, but the benefits will be slow to be realized. Generally, the agreement does not change the requirements immediately, but commits the parties to mechanisms that will push them to increase their level of cooperation and harmonization over time. It will take several years for these differences to be reconciled and for the mechanisms to gain effectiveness.

For businesses, the FLMM and the dispute resolution mechanisms will be important groups to remain aware of, and to reach out to in order to ensure that they listen to concerns around trade barriers within Canada.

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<sup>10</sup> p.166, Ibid.