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# DEVELOPING TOOLS FOR SOCIAL WORK MOBILITY



**Mobility Tool Kit Step 2:**  
Adapt knowledge to local  
context:  
Legal lessons learned

# Background – AIT & CFTA

- 1995 – Agreement on Internal Trade (AIT) came into effect
  - Purpose to facilitate the movement of people, goods, services, and investment
- 2009 – Chapter 7 (Labour Mobility) of the AIT amended
  - Negative list approach
- 2017 – Canadian Free Trade Agreement (CFTA) came into effect
  - Entire agreement moved to negative list approach

# Principles of the CFTA

- Purpose: 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.
- Certificate-to-certificate recognition: Regulatory authorities must trust that due diligence is applied by other jurisdictions in Canada in certifying their workers to practice their occupations.

# Principles of the CFTA

- Permissible Requirements

- Application form and fee
- Proof of current certification & evidence of good standing
- Bond/Insurance
- Criminal Record Check & evidence of good character
- Demonstration of local knowledge
- Language proficiency

- Non-Permissible Requirements

- Residency
- Material additional training, experience, examinations, or assessments
  - Exception - if the person has not practiced the occupation within a specified period of time.
  - Exception – Legitimate Objective

# Principles of the CFTA – Legitimate Objective Exception

- A Legitimate Objective Exception allows a Party to require workers from a particular jurisdiction(s) to complete an additional requirement(s) (e.g., training) to ensure the worker has the skills, knowledge and abilities required to practice the occupation in the province.
- Parties can maintain an exception if:
  1. the purpose of the additional certification requirement is to achieve a *legitimate objective*;
  2. the additional certification requirement is clearly justified to support a legitimate objective;\*
  3. the additional certification requirement is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and
  4. the measure does not create a disguised restriction to labour mobility.

# Mobility and Qualification Recognition Working Group

- Advises regulatory bodies of their obligations under Chapter 7
- Helps negotiate the resolution of disputes between jurisdictions
- Develops policies and guidelines to interpret and address mobility issues



# Challenge – Legal Interpretation

- Not all situations can be foreseen or addressed in advance (while creating the agreement)
- Trade agreements require consensus
- Dispute resolution process is onerous, expensive, and stigmatized
  - Article 1000 – “The Parties shall make every attempt through cooperation, consultations, and other dispute avoidance and resolution processes available to them to arrive at a mutually satisfactory resolution of any matter that may affect the operation of this Agreement.”
  - Informal Consultations -> Formal Consultations (min 120 days) -> Dispute Resolution Panel
  - Compliance Panel (1 year after Dispute Resolution Panel) can impose a Monetary Penalty up to \$10,000,000 (depending on the jurisdiction’s population)

# Principles of the CFTA (Revisited)

- Permissible Requirements
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  - Demonstration of local knowledge
  - Language proficiency
- Non-Permissible Requirements
  - Residency
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# Policy Interpretation Records (PIRs)

- PIRs enable the jurisdictions to come to some form of consensus on smaller issues
- Administered by a PIR sub-committee, but requires input and consensus from all Labour Mobility Coordinators (LMCs)

# PIR Process

1. Check for analogous existing interpretations
2. Document/Introduce the issue (using template)
3. Circulate the issue to LMCs
  - Discuss at next regularly scheduled call
  - Allow time for written feedback
4. Document the opinion/perspective of each LMC
  - Opinions/perspectives are confidential
5. Look for commonalities in perspectives – distill into smaller issues on which consensus might be reached
6. Seek formal consensus from LMCs
7. Determine if it is appropriate to communicate the consensus to the public
8. Where consensus cannot be reached, monitor issue and determine if further action is needed

# Example Consensus Points

- Chapter 7 does not apply to ‘student’, ‘in-training’, ‘candidate’, or ‘associate’ certifications, but transfer opportunities may be considered where appropriate.
- Chapter 7 applies to certified workers in both the public and private sectors, but does not apply to non-certified workers in either the public or private sectors.
- Chapter 7 applies to new graduates, even if they have not yet practiced the occupation.
- A readily available half day course does not constitute a ‘material requirement.’

# Practical Challenges

- Differences in pathways to certification lead to distrust in competency of transfer applicants
  - Concerns of 'province-hopping'
- Different scope/naming for certification categories makes it difficult to determine the equivalent certification
- Intersection with international qualification recognition

# Practical Solutions

- Harmonization
  - Establishing common certification categories, occupational standards, accreditation processes, exams, experience requirements, etc.
  - Recognizing equivalencies between different certification pathways
  - Standardizing definitions (e.g., good character)
- Transparency
  - Mappings between jurisdictional occupational standards
  - Notification of changes to occupational standards/certification requirements
- Continuing Education Requirements
  - Ensures public safety post-certification