

# **Agreement on Internal Trade**

**Report of the Article 1716 Panel Concerning the Dispute Between  
the Certified General Accountants Association of New Brunswick  
and Québec Regarding Québec's Measures Governing  
the Practice of Public Accounting**

August 19, 2005

ISBN: 1-894055-62-4



**TABLE OF CONTENTS**

**ABBREVIATIONS..... ii**

**1. INTRODUCTION ..... 1**

**2. COMPLAINT PROCESS..... 2**

**3. THE COMPLAINT ..... 3**

**4. THE RESPONSE ..... 5**

**5. PANEL FINDINGS ..... 7**

**5.1 Procedural Issues ..... 7**

        5.1.1 Limitation Provision under Article 1712.4 of the *Agreement*..... 7

        5.1.2 Waiver of Rights..... 12

**5.2 Substantive Issues ..... 12**

        5.2.1 Public Accounting and “Occupation” under the *Agreement*..... 12

        5.2.2 Alleged Inconsistency with the *Agreement*..... 13

        5.2.3 Justification on the Basis of a Legitimate Objective ..... 20

**6. DETERMINATION OF IMPAIRMENT OF TRADE AND INJURY ..... 22**

**7. SUMMARY OF PANEL FINDINGS..... 23**

**8. PANEL RECOMMENDATIONS ..... 24**

**9. AWARD OF COSTS ..... 24**

**APPENDIX A: Participants in the Panel Hearing ..... 25**

## ABBREVIATIONS

<i>Agreement</i>	<i>Agreement on Internal Trade</i>
CA	Chartered Accountant
CAA	Québec's <i>Chartered Accountants Act</i>
CGA-Canada	Certified General Accountants Association of Canada
CGA-NB	Certified General Accountants Association of New Brunswick
CGA-Quebec	Certified General Accountants Association of Quebec
NOC	National Occupational Classification
The <i>Code</i>	Québec's <i>Professional Code</i>
The <i>Office</i>	<i>Office des professions du Québec</i>

## 1. INTRODUCTION

This is the report of a dispute resolution panel (the Panel) established under the *Agreement on Internal Trade* (the *Agreement*)<sup>1</sup> to address a dispute between the Certified General Accountants of New Brunswick (the Complainant) and the government of Québec (the Respondent).

The *Agreement* was entered into in 1995 by the Government of Canada, ten (10) provincial governments and two (2) territorial governments “to reduce and eliminate, to the extent possible the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market.” All government parties to the *Agreement* “recognize and agree that enhancing trade and mobility within Canada would contribute to the attainment of this goal.”

Under the terms of the *Agreement* a private party can initiate dispute resolution proceedings to resolve a complaint against a government.

The Complainant in this case, the Certified General Accountants Association of New Brunswick (CGA-NB), initiated a dispute resolution proceeding alleging that some Québec laws and regulations (measures) have the effect of restricting labour mobility in a manner that is inconsistent with Chapter Seven (Labour Mobility) of the *Agreement*.

A panel was duly established to review the dispute. The Panel's terms of reference are to examine whether the Québec laws and regulation at issue are inconsistent with the *Agreement*.

As provided in paragraph 2 of Article 1718 (Report of Panel) of the *Agreement*, this Report contains:

- “(a) findings of fact;
- (b) a determination, with reasons, as to whether the actual measure in question is inconsistent with this Agreement;
- (c) a determination, with reasons, as to whether the actual measure has impaired internal trade and has caused injury; and
- (d) recommendations, if requested by either the person or the Party complained against, to assist in resolving the dispute.”

---

<sup>1</sup> The *Agreement on Internal Trade*; Entered into force July 1, 1995. Unless otherwise specified, “Article” and “Annex” refer to the articles and annexes of the *Agreement*. A consolidated version of the *Agreement* is available at [www.ait-aci.ca](http://www.ait-aci.ca).

## **2. COMPLAINT PROCESS**

In 2002, a childcare centre in Gespapegiag, Québec, retained the services of Michel Légaré to conduct an audit of the organization. Mr Légaré is a resident of New Brunswick and a member of both CGA-NB and the Certified General Accountants Association of Quebec (CGA-Québec).

On May 16, 2002, after he had completed the work, Mr. Légaré was informed by the Government of Québec that the audit would not be accepted because Québec's *Childcare Centre Act and Other Services* restricted audits to Chartered Accountants (CAs). Upon learning this Mr. Légaré approached CGA-NB for assistance.

On June 27, 2002, CGA-NB expressed its concerns about this situation to the Labour Mobility Coordinator for the Government of New Brunswick and asked that she consult with her counterpart in Québec to determine what could be done to resolve the situation. She did by way of letter dated July 23, 2002.

In his September 16, 2002 response, the Québec Labour Mobility Coordinator replied that:

“a. an audit of the financial statements of a childcare centre must be conducted by a CA under the terms of the Regulation respecting Childcare centres (R.S.Q., c. C-8.2) and that this is not a restriction on interprovincial labour mobility but, rather, the exercise of an exclusive field of activity accorded to chartered accountants by the Chartered Accountants Act (R.S.Q., c-48);

b. with regard to the more general question of the practice of public accounting in Quebec, the minister responsible for the application of professional acts gave the Office des professions du Québec [Quebec professions board] the task of producing a description of the skills required for conducting an audit, but this work was just getting under way.”

After being informed of Québec's response, CGA-NB consulted other Certified General Accountants Associations and trade experts to determine whether Québec's measures contravened the labour mobility provisions of the *Agreement*.

Based on the advice obtained, CGA-NB formally contacted the government of New Brunswick on March 23, 2004 with a view to having it initiate consultations with the Government of Québec under Article 711 (Consultations) of the *Agreement*. On May 13, 2004, the Government of New Brunswick informed CGA-NB that it would not initiate the requested consultations.

On August 19, 2004, CGA-NB once again contacted the government of New Brunswick to have it utilize the dispute resolution procedure under Part A (Government-to-Government Dispute Resolution) of Chapter Seventeen (Dispute Resolution) of the *Agreement* on behalf of CGA-NB.

On September 1, 2004, the government of New Brunswick's refused to grant this second request.

On September 23, 2004, pursuant to Article 1713 (Screening) of the *Agreement*, CGA-NB submitted its complaint to the New Brunswick Screener who authorized CGA-NB to proceed with the dispute resolution process under Part B (Person-to-Government Dispute Resolution) of Chapter Seventeen of the *Agreement*.

On November 9, 2004, CGA-NB contacted the *Ministre du Développement économique et régional et de la Recherche du Québec* (Québec Department of Economic and Regional Development and Research) specifically to request consultations, as provided for by Article 1714 (Consultations) of the *Agreement*.

On January 5, 2005, the parties in the dispute reached an agreement to extend the consultation period to the end of February. Later, on March 15, 2005, pursuant to Article 1716 (Request for Panel) of the *Agreement*, CGA-NB requested the establishment of a panel to rule on the questions at issue. The Panel held a hearing in Québec City on July 5<sup>th</sup>, 2005.

### **3. THE COMPLAINT<sup>2</sup>**

CGA-NB alleges that the Government of Québec maintains laws and regulations that have the effect of restricting the practice of public accounting almost exclusively to CAs. More specifically, Section 24 of Québec's *Chartered Accountants Act (CAA)*<sup>3</sup>, along with other legislative and regulatory measures, restricts the performance of audits and reviews for some entities to CAs.

CGA-NB argues that these measures prevent competent public accountants from other jurisdictions, including New Brunswick, who are not CAs, from practicing public accounting in Québec. According to CGA-NB the measures restrict interprovincial mobility of workers competent to perform public accounting, which is contrary to the provisions of the *Agreement*.

CGA-NB further alleges that Québec's measures relating to the licensing, certification or registration of out-of-province workers do not related principally to competence, as is required by Article 707 (Licensing, Certification and Registration of Workers) of the *Agreement*, nor do they recognize the occupational qualifications of New Brunswick's CGAs, as is required by Article 708 (Recognition of Occupational Qualifications and Reconciliation of Occupational Standards).

---

<sup>2</sup> CGA-NB's complaint is more fully described in its two written submissions to the Panel: 1) Submission of the Certified General Accountants Association of New Brunswick to the Article 1716 Panel concerning Québec's Measures Restricting Access to the Practice of Public Accounting, April 8, 2005 (hereinafter CGA-NB Original Submission); 2) Reply Submission of the Certified General Accountants Association of New Brunswick to the Article 1716 Panel concerning Québec's Measures Restricting Access to the Practice of Public Accounting, June 3, 2005 (hereinafter CGA-NB Reply Submission).

<sup>3</sup> *Chartered Accountants Act (CAA)*; R.S.Q., Chapter C-48

Finally, CGA-NB argues that there is no legitimate objective served by restricting public accounting almost exclusively to CAs.

CGA-NB asked the Panel to find that:

- (a) Public accounting is an “occupation” as defined by the *Agreement*;
- (b) Québec’s measures that restrict public accounting to CAs are inconsistent with the requirements of the *Agreement*, particularly Article 707 and Article 708;
- (c) That Québec’s measures discriminate against some out-of-province public accountants;
- (d) That Québec’s measures are not justified as a legitimate objective under Article 709 (Legitimate Objectives); and
- (e) That Québec must ensure that the *Office des professions du Québec* (the *Office*)<sup>4</sup> complies with the requirements of the *Agreement* and ensure that CGAs who practice public accounting in New Brunswick and other Canadian jurisdictions can practice public accounting in Québec as provided by the *Agreement*.

CGA-NB asked the Panel to make the following recommendations to resolve the issue of access to public accounting in Québec for CGAs who practice public accounting in New Brunswick and other Canadian jurisdictions:

- (a) That Québec amend its measures to remove any restrictions preventing CGAs from other jurisdictions the right to practice public accounting in Québec;
- (b) That Québec undertake a process to assess the competency of public accountants from outside the province;
- (c) That Québec recognize and accept the qualifications of CGA’s from New Brunswick as sufficient to practice the occupation of public accounting in Québec;
- (d) That Québec make whatever changes are necessary to the *Professional Code* (the *Code*)<sup>5</sup> and its regulations so that the *Office* can recognize the qualifications of CGAs from other jurisdictions, who are qualified to

---

<sup>4</sup> The *Office des professions du Québec* was established under the *Professional Code* (the *Code*), the legal basis for regulating professions in Québec. The *Office* is responsible for ensuring that professional orders established under the *Code* ensure the protection of the public.

<sup>5</sup> *Professional Code*; R.S.Q, Chapter 26; 1973



practice public accounting, to do so in Québec as provided in Article 708 and Annex 708 (Occupational Qualifications and Standards) of the *Agreement*; and

- (e) That Québec be directed to pay the costs associated with this complaint to CGA-NB pursuant to Article 1718(3) (Report of Panel) and Annex 1718.3 (Costs).

#### **4. THE RESPONSE<sup>6</sup>**

Québec contests the claims made by CGA-NB.

The Government of Québec first submits that CGA-NB has not commenced dispute resolution proceedings within the time limitation provisions of the *Agreement*. According to Québec, CGA-NB should have commenced such proceeding within two years after the date on which it acquired, or should have acquired, knowledge of the alleged inconsistent measure and knowledge that the person incurred loss or damage or suffered a denial of benefit. Québec claims that CGA-NB has failed to meet this requirement and that the Panel should reject the complaint for this reason alone.

In the alternative, the Government of Québec argues that the province's legal and regulatory regime as it relates to the practice of public accounting is compatible with its *Agreement* commitments, particularly with regard to the terms of Chapter Seven of the *Agreement*.

Further, Québec asserts that Article 300 (Reaffirmation of Constitutional Powers and Responsibilities) of the *Agreement* recognizes that Québec's National Assembly has exclusive legislative powers related to professional law and, therefore, the authority to limit or direct the practice of certain professional activities, including auditing.

If the Panel finds that the measures at issue are inconsistent with Articles 707 or 708, Québec maintains, again in the alternative, that the purpose of these measures is a legitimate objective and that they are still permissible under Article 709 of the *Agreement*.

Therefore, the Government of Québec is asking the Panel to conclude the following:

---

<sup>6</sup> Québec's response is more fully described in its two written submissions to the Panel: 1) Dispute Resolution Procedures under Chapter 17 - Part B of the *Agreement on Internal Trade Concerning the Claims Made by CGA-New Brunswick Regarding Québec's Measures Governing the Practice of Public Accounting*, May 24, 2005 (hereinafter Québec's Original Submission); 2) Dispute Resolution Procedures under Chapter 17-Part B of the *Agreement on Internal Trade Concerning the Claims Made by CGA-New Brunswick Regarding Québec's Measures Governing the Practice of Public Accounting - Reply Submission from Quebec*, June 13, 2005 (hereinafter Québec's Reply Submission).

- That the dispute resolution sought by CGA-NB with regard to the practice of public accounting should be rejected under the time limitation provisions of the *Agreement*.
- That, in the alternative, and solely if it should prove necessary, Québec's legislation and regulations on the practice of public accounting are consistent with Article 707 of the *Agreement* because:
  - i. the legislative and regulatory system provided for by the *Professional Code* and by professional acts are related principally to competence;
  - ii. such measures are published upon adoption through the systematic appearance of acts and regulations in the *Gazette officielle du Québec* and they are highly publicized by the attention that the adoption of the *Professional Code* and professional acts has attracted in the accounting sector;
  - iii. the organization of professional acts does not result in unnecessary delays in the provision of examinations, assessments, licenses, certificates, registration or other services that are occupational prerequisites for workers of any other Party;
  - iv. except for actual cost differentials, practical application of such measures does not impose fees or other costs that are more burdensome than those imposed on our own workers.
- That, even if the contested provision was found to be inconsistent with either Article 707 or Article 708 of the *Agreement*, it is justifiable under Article 709 because:
  - i. the purpose of the measure is to achieve a legitimate objective;
  - ii. the measure does not operate to impair unduly the access of workers of a Party who meet that legitimate objective;
  - iii. the measure is not more mobility-restrictive than necessary to achieve that legitimate objective; and
  - iv. the measure does not create a disguised restriction to mobility.

## **5. PANEL FINDINGS**

### **5.1 Procedural Issues**

#### **5.1.1 Limitation Provision under Article 1712.4 of the *Agreement***

The Respondent claims that the Complainant's request for dispute resolution is inadmissible under the time limitation provisions of Article 1712 (Initiation of Proceedings by Persons) of the *Agreement* and accordingly the Panel need not make a determination on the merits of the complaint, particularly regarding the consistency of the disputed measures with Chapter Seven of the *Agreement* or their justification thereunder.

The Complainant argues, on the other hand, that its request for dispute resolution has met the time limitation imposed by the *Agreement*.

The relevant paragraphs of Article 1712 provides as follows:

“ 1. A person of a Party may commence dispute resolution proceedings in respect of all matters, other than those covered by Chapter Five (Procurement), where the person has received:

- (a) notice under Article 1711(4) that a Party will not initiate dispute resolution proceedings on the person's behalf; or
- (b) notice under Article 1711(5) that a Party will not request the establishment of a panel.

2....

3. The person requesting the commencement of dispute resolution proceedings shall provide written notice to the Party that refused to initiate proceedings or request a panel, to the Party complained against and to the Secretariat.

4. A person may not commence proceedings under this Article if the person has failed to:

- (a) request a Party to initiate dispute resolution proceedings under Article 1711(1);
- (b) request a contact point to initiate dispute resolution proceedings under Article 513(5) (Bid Protest Proceedings – Provinces); or
- (c) commence any applicable dispute avoidance and resolution process listed in Annex 1701.4 that may be invoked by the person;

within two years after the date on which the person acquired, or should have acquired, knowledge of the alleged inconsistent measure and knowledge that the person incurred loss or damage or suffered a denial of benefit.”

Accordingly, in order for the Respondent to succeed in its argument that the Complainant did not meet the limitation provisions of Article 1712(4), it must prove that

the Complainant failed to meet either of the elements stipulated in Article 1712(4)(a), (b), or (c) within the two years after it acquired or should have acquired knowledge of the alleged inconsistent measure and knowledge that it incurred loss or damage or suffered a denial of benefit.

In other words, one must establish first on what date the Complainant commenced any applicable dispute avoidance and resolution process. Having established that date, one must then determine whether that process was commenced within two years of the date:

- (a) the Complainant acquired or ought to have acquired knowledge of the alleged inconsistent measure; and
- (b) the Complainant acquired or ought to have acquired knowledge of the loss or damage or denial of benefit.

#### **5.1.1.1 Commencement of the Dispute Avoidance and Resolution Process**

The Complainant claims that by letter dated March 23, 2004 addressed to the New Brunswick Labour Mobility Coordinator, Ms Hope Brewer, it requested consultations with Québec concerning Québec's Public Accountant regulatory system and thereby commenced a dispute avoidance and resolution process in accordance with Article 712(4)(c) on that date.

The Respondent, in its Original Submission (Item 55 at page 18), claims that the Complainant made an unofficial request for consultations on July 23, 2002 and an official request for consultations on November 9, 2004; in any case, much more than 2 years after it acquired knowledge, or it should have acquired knowledge, of the alleged *Agreement*–inconsistent measures.

In addition to paragraph 1712(4)(c) referred to above, the relevant provision of the *Agreement* is Annex 1701.4 (Dispute Avoidance and Resolution Processes in Sector Chapters), which provides inter alia:

“For the purposes of Articles 1701(4) and 1711(3)(b), a person or a Party is deemed to have completed or exhausted the applicable dispute avoidance and resolution process when the applicable time period, as follows, has elapsed:

- (a) ...
- (b) for Chapter Seven (Labour Mobility), 90 days after the date of delivery of the request for assistance under Article 711(5) (Consultations);
- (c)...

Annex 1701.4 deals with the applicable time when an applicable dispute avoidance and resolution process is deemed to be completed or exhausted under the various chapters of the *Agreement*. While it does not deal with “the commencement of any applicable dispute avoidance” as such, it does, in listing the time frame for Chapter Seven, refer to Article 711.

In the Panel's view, to "commence any applicable dispute avoidance and resolution process," a party must initiate a process in such a way that it directly refers to the dispute avoidance and resolution provisions of the Agreement. Accordingly, the Complainant's letter dated March 23, 2004 requesting the Government of New Brunswick to consult with the Respondent pursuant to Article 711 is, in the Panel's view, the commencement of any applicable dispute avoidance and resolution process within the meaning of Article 1712(4)(c). The Complainant's letter dated March 23, 2004, clearly asks the Government of New Brunswick to undertake consultations to resolve the issue as provided by Article 711 of the *Agreement*, the first step in a labour mobility dispute resolution process.

With March 23, 2002, set as the relevant date of commencement of any applicable dispute avoidance and resolution process, the question is: has the Respondent established that the Complainant had knowledge or purported knowledge of the alleged inconsistent measure and knowledge or purported knowledge of loss or damage or denial of benefit within the meaning of Article 1712(4), earlier than two years before March 23, 2004, that is, earlier than March 23, 2002?

#### **5.1.1.2 Knowledge of the Alleged Inconsistent Measure**

In support of its position, the Respondent argues:

- The Complainant had good knowledge of the Respondent's professional regime for many years;
- Since the *Agreement's* coming into force in 1995 and, in any event since the lodging of the complaint under the *Agreement* by CGA Manitoba against the Province of Ontario in December 1999, the Complainant has claimed that the Respondent's measures regulating public accounting were inconsistent with Chapter Seven of the *Agreement*.

While the Complainant acknowledges that it had knowledge of the Respondent's professional regime for a long time, its position is that it did not have, nor should it be deemed to have, had knowledge that the Respondent's professional regime was in any way inconsistent with the provisions of Chapter Seven of the *Agreement* until it reviewed a complaint received from one of its members whose audit was denied by the Respondent in the spring of 2002.

The Panel notes the following chronology of events:

- the enactment of An Act to regulate the practice of accountancy and auditing<sup>7</sup> in Québec in 1946;

---

<sup>7</sup> *An Act to regulate the practice of accountancy and auditing*, 10 George VI, Chapter 47.

- the adoption in Québec of the *Professional Code* and of the *Chartered Accountants Act*<sup>8</sup> in 1973;
- correspondence from the Certified General Accountants Association of Canada (CGA-Canada), to which the Complainant belongs, acknowledging the huge differences in the public accounting regimes in the various provinces of Canada.

Given these facts together with the legal relationship of the Complainant and the other material in support, there is in the Panel's view sufficient proof that the Complainant had knowledge of the alleged inconsistent measure with the *Agreement*. By virtue of its relationship with CGA-Canada, knowledge of CGA-Canada with the Québec regime and its alleged inconsistency with the *Agreement* would be attributed to the Complainant.

The Panel is satisfied based on the evidence put forth by the Respondent (see paragraphs 36 to 47 of Québec's Original Submission and paragraphs 6 to 11 of Québec's Reply Submission) that the Complainant had knowledge or should have had knowledge of the alleged inconsistent measure well before March 23, 2002, which would be the relevant date for determining the limitation provision.

#### **5.1.1.3 Knowledge of Incurred Loss or Damage or Denial of Benefit**

The Respondent argues that the Complainant was well aware of the Respondent's professional regime, which it alleged denied its members access to practice public accounting and consequently had knowledge of a denial of benefit. This knowledge predates the signing of the *Agreement* in the Respondent's view. The Respondent also argues that by its affiliation with CGA-Canada, the Complainant must certainly have had knowledge of a denial of benefit since the date that CGA-Manitoba lodged its complaint against the Province of Ontario pursuant to the *Agreement* on December 16, 1999. This is well before the September 2002 date claimed by the Complainant. Furthermore, the Respondent argues that the date Mr. Légaré notified the Complainant that his audit had been refused is not relevant as Mr. Légaré is not a party to the dispute.

The Complainant disagrees and argues that the provisions of the *Agreement* are clear. The damage or loss must have been incurred or the denial of benefit must have occurred and accordingly, only when the Complainant received a letter from the Respondent in September 16, 2002 advising that the measure was not inconsistent with the *Agreement* did it acquire knowledge that its member was denied a benefit.

The Panel is of the opinion that the Parties to the *Agreement* did intend that the rules governing a dispute between a person and a Party be different, in that the provision does require that the person demonstrate knowledge of loss or damage or the denial of a benefit contrary to the provision dealing with a dispute between Parties to the *Agreement*, which only requires a demonstration of "potential injury." The damage or

---

<sup>8</sup> *Chartered Accountants Act*, R.S.Q., Chapter 48.

loss or the denial of benefit must be “actual.” In other words, it must have been incurred before a person can commence dispute resolution proceedings. The language is clear. This requirement is one of the safeguards built into the *Agreement* by the Parties to ensure that “persons” do not engage governments in cumbersome and costly dispute resolution proceedings for capricious or whimsical reasons, even though the government’s laws may, on their face, be inconsistent with the *Agreement*.

In the Panel’s view, no loss or damage or denial of benefit occurred until at least May 2002 when an audit conducted by one of its members (Mr Légaré) for a Québec childcare centre was denied by the government of Québec because it was not prepared by a CA.

The Respondent argued that Mr Légaré was not a party to the dispute and accordingly the date his audit was denied was not relevant to these proceedings. The Panel is satisfied that the Complainant is acting as an agent of its members in this dispute. There is nothing in the *Agreement* that would preclude this. The *Agreement* defines “person” to include a natural person or an enterprise. Accordingly, the Panel is satisfied that the date the Complainant acquired knowledge of denial of benefit could not have been earlier than the date the Complainant was advised by Mr Légaré, a member of the Complainant, that his audit had been refused. This audit refusal, in the Panel’s view, represents an actual denial of benefit within the meaning of Article 1712(4)(c).

To equate knowledge of a professional regime, which purported to deny access to practice to knowledge of a denial of benefit, is not justified. A denial of benefit must be actual. While the Complainant may have known of the alleged inconsistent measure such knowledge does not equate to knowledge of actual denial of benefit.

Also, to attribute to the Complainant the actual knowledge of loss or damage or denial of benefit as argued by the Respondent on the date that CGA-Manitoba filed a complaint against the Province of Ontario in December 1999 is not justified. That complaint related to Ontario measures, not Québec measures. There is insufficient evidence of loss or damage or actual denial of benefit prior to May 2002. The Panel is satisfied that the Complainant only acquired knowledge of the denial of a benefit when its member advised the Complainant of that fact in May 2002 and certainly following receipt of letter dated September 16, 2002 to it from the Respondent.

**Based on the evidence and the interpretation of the relevant provisions of the *Agreement*, the Panel is satisfied that the Complainant commenced the applicable dispute avoidance and resolution process within the meaning of 1712(4)(c) on March 23, 2004, and that, although it did have knowledge or should have had knowledge of the Respondent’s alleged inconsistent measures before March 23, 2002, it did not have knowledge or purported knowledge of loss or damage or denial of benefit within the meaning of Article 1712(4) until May 2002, when it was advised of an actual denial of benefit.**

**As the Respondent has not satisfied its burden of proof on all required elements of Article 1712(4)(c), and in particular timing of knowledge or purported knowledge of incurred damage or loss or occurrence of a denial of benefit, the Panel finds that the Respondent's evidence is insufficient to succeed in terminating the Complainant's rights under Article 1712(4) of the *Agreement* and accordingly rejects the Respondent's argument that Complainant has not met the time limitation provided in Article 1712(4).**

### **5.1.2 Waiver of Rights**

The Panel raised the issue of consultation and waiver of rights under the *Agreement* and whether the Respondent had raised the issue of time limitation imposed in Article 1712(4) with the Complainant.

The Panel was advised that although consultations proceeded, the Respondent did raise the issue of the time limitation with the Complainant in its response to the request for consultations and with the consent of the Complainant filed a letter dated November 24, 2004 addressed to the Complainant.

Both parties made representations to the Panel to the effect that the operating principles of the *Agreement* impose that the parties cooperate and mutually consult to achieve the overall objectives of the *Agreement* and that the Panel is the appropriate forum to deal with the time limitation of Article 1712(4).

The Panel would caution the Parties to the *Agreement* that, although the Panel may have taken the view that the operating principles of the *Agreement* may not justify too technical an interpretation, limitation provisions are interpreted strictly and against the party invoking such provisions. The Panel recommends that the Party seeking to invoke the limitation period should ensure that it preserves its right notwithstanding the consultations so as to prevent the loss of such right by implication.

## **5.2 Substantive Issues**

### **5.2.1 Public Accounting and "Occupation" under the *Agreement***

The Complainant submits that public accounting is an occupation within the meaning of Article 713 (Definitions). It submits the definitions as found in various statutes of Canada clearly define public accounting as an occupation. It further alleges that by the exclusion of bookkeeping in the CAA definition of section 19, the Québec definition is clearly similar to the definitions of public accounting as contained in other legislation in Canada. In addition, it submits that public accounting is listed as an occupational title within the National Occupational Classification (NOC).

The Respondent submits that while the professional activity of public accounting is recognized in Québec, it is not per se recognized by title. The Professional regime in Québec groups practitioners in the field of accounting in three different orders: Chartered Accountants (CAs), Certified General Accountants (CGAs) and Certified



Management Accountants (CMAs), (see page 119 lines 20 and following of Transcript<sup>9</sup>). Pursuant to Article 24 of the CAA, with certain exceptions, full rights to practice public accounting are reserved to members of the Professional Society of Chartered Accountants in accordance with the *Professional Code* (Transcript page 117 lines 22-25 and p. 118, lines 1-7). Exceptions are auditing of municipalities, school boards and cooperatives. CMAs and CGAs have restricted rights of practice.

Article 713 (Definitions) provides as follows:

“1. In this Chapter...**occupation** means a set of jobs which, with some variation, are similar in their main tasks or duties or in the type of work performed...

2. For the purposes of interpreting the definition “occupation” in paragraph 1, the Parties shall be guided by the classification of occupation contained in the 1993 publication of Employment and Immigration Canada (now called Human Resources Development Canada) entitled National Occupational Classification (the “NOC”). In this regard, “occupation” shall include, where appropriate, any recognized separate and distinct occupation that is described in an occupational title under an occupational unit group listed in the NOC.”

In the Panel’s view, the Respondent’s professional regulatory regime is not sufficiently compelling to displace the presumption that public accounting is an occupation, given its inclusion in the NOC as a separate and distinct occupation. Consequently, there is no reason why the Panel should not be guided by the inclusion of public accounting as a separate occupation title in the NOC.

Based on the evidence and representations before it, the Panel is satisfied that public accounting is a distinct occupation within the meaning of Article 713. In making this determination, the Panel is mindful of the decision of the CGA-Manitoba/Ontario Panel<sup>10</sup>, which found that public accounting is a distinct occupation within the meaning of Article 713 and is subject to the provisions of the *Agreement*.

**The Panel finds that public accounting is a distinct occupation within the meaning of Article 713 and is subject to the provisions of the *Agreement*.**

### **5.2.2 Alleged Inconsistency with the *Agreement***

The Complainant alleges that Québec’s measure restricting public accounting to CAs is inconsistent with the requirements of the *Agreement* and in particular Articles 707 and 708. While it acknowledges that the Respondent may establish its own standards, the standards must relate principally to competence. A licensing system that precludes the

---

<sup>9</sup> Transcript of the Panel hearing in Québec City on July 5, 2005.

<sup>10</sup> Report of the Article 1716 Panel Concerning the Dispute Between the Certified General Accountants Association of Manitoba and Ontario Regarding the *Public Accountancy Act (R.S.O., 1990, Chapter P-37) and Regulations*; Winnipeg, Manitoba; October 5, 2001 (hereinafter CGA/ON Panel Report). Panel reports are available at [www.ait-aci.ca](http://www.ait-aci.ca).

consideration of alternative means of acquiring competences through a combination of training and experience cannot relate principally to competence and, therefore is not consistent with Article 707(1)(a). Further, the Respondent is required to recognize occupational qualifications of workers from another province, even though the competence to practice the particular occupation was acquired through means that are different from the province in question.

The Respondent argues that Article 300 of the *Agreement* confirms the Respondent's legislative authority or its right to exercise such authority under the Constitution. It is within the Respondent's legislative authority to regulate certain professional activities including public accounting, which it has done essentially since 1946. Its measures meet all the test of consistency of Articles 707 and 708 of the *Agreement*. It further argues that, if its measures are determined to be inconsistent with the *Agreement*, they are nevertheless permissible pursuant to Article 709 to achieve a legitimate objective, namely consumer protection.

The Respondent's regulatory regime is governed by the *Professional Code*, the *Chartered Accountants Act* and the Regulations pursuant thereto. For specific details of the regulatory regime and the underlying basis of same, reference is made to paragraphs 63 to 73 of the Respondent's Reply Submission. Particular note is made to Article 26 of the *Professional Code*, which reads in part "The members of an order shall not be granted the exclusive right to practice a profession except by an act..."

The alleged inconsistent measures provide as follows.

Section 21 of the *CAA* provides that CAs from other provinces or territories can be granted permission to practice public accounting in Québec:

"Permit to member of another province

21. The Bureau may issue a permit to a member of a corporation of chartered accountants of another province or of a territory of Canada upon written application for that purpose accompanied by the following documents:

- (a) a written recommendation of three members of the Order des comptables agréés du Québec;
- (b) a certificate of the competent officer attesting that the applicant is a member in good standing of a corporate of chartered accountants or another province or of a territory of Canada."

Section 24 of the *CAA* restricts public accounting with certain exceptions to CAs by providing that:

"24. Subject to the rights and privileges expressly granted by law to other professionals, no person may practice public accountancy unless he is a chartered accountant.

This section does not apply to acts performed:

- (a) by a person in accordance with the provisions of a regulation pursuant to paragraph (h) of section 94 of the Professional Code (chapter C-26);
- (b) by accountants and auditors employed by the Government in the performance of their duties.”

Other exceptions to Section 24 are contained in Sections 28 and 29:

“28. Nothing in this Act shall prevent a member of a professional order of accountants referred to in the Professional Code (Chapter C-26) from auditing the accounts of school boards.

29. Notwithstanding this Act, sections 140 to 161, 222, 388 to 404 and 558 of the Act respecting financial services cooperatives (chapter C-67.3), sections 135 to 142, 177 to 180 and 233 of the Cooperatives Act (chapter C-67.2) and section 21 of the Act respecting the Ministère des Affaires municipale, du Sport et du Loisir (chapter M-22.a) continue to apply.”

Thus, a CGA (whether or not from Québec) would be entitled to practice public accounting in limited circumstances. These limited public accounting opportunities are further restricted by the many statutory or regulatory provisions that have the express or implied effect of restricting public accounting functions to CAs.<sup>11</sup>

The relevant provisions of the *Agreement* provide as follows:

Article 707:

“1. Subject to Article 709, each Party shall ensure that any measure that it adopts or maintains relating to the licensing, certification or registration of workers of any other party:

- (a) relates principally to competence;
- (b) is published or otherwise readily accessible;
- (c) does not result in unnecessary delays in the provision of examinations, assessments, licences, certificates, registration or other services that are occupational prerequisites for workers of any other Party; and
- (d) except for actual cost differentials, does not impose fees or other costs that are more burdensome than those imposed on its own workers.

2. Subject to Article 709, in the case of regulated trades, each Party shall provide automatic recognition and free access to all workers holdings an Inter provincial Standards (Red Seal) Program qualification.”

---

<sup>11</sup> For details of statutory measures, see CGA-NB Original Submission and Québec’s Reply Submission.

Article 708:

“Subject of Article 709, each Party undertakes to mutually recognize the occupational qualifications required of workers of any other Party and to reconcile differences in occupational standards in the manner specified by Annex 708. The Red Seal program shall be the primary method through which occupational qualifications in regulated trades are recognized.”

Article 709 reads in part:

“1. Where it is established that a measure is inconsistent with Article 708, 707 or 709, that measure is still permissible under this Chapter where it can be demonstrated that:

- (a) the purpose of the measure is to achieve a legitimate objective;
- (b) the measure does not operate to impair unduly the access of workers of a Party who meet that legitimate objective;
- (c) the measure is not more mobility-restrictive than necessary to achieve that legitimate objective; and
- (d) the measure does not create a disguised restriction to mobility.”

### **5.2.2.1 CA Standard for Occupational Standard for Public Accounting**

As indicated earlier, the Respondent has selected the CA standard as the occupational standard for public accounting. The Panel acknowledges the importance placed by the Respondent on protecting consumers and, flowing from that, the policy imperative the Respondent has placed on ensuring that accountants practicing public accounting in Québec are adequately qualified. In pursuing that policy imperative, the Respondent has chosen the training and education standards for CAs as the occupational standard for licensing the practice of public accounting in Québec.

The Panel does not believe that the selection of the occupational standard for the practice of public accounting in Québec is of itself a barrier to mobility. In concluding in this regard, the Panel is mindful of the finding in the CGA-Manitoba/Ontario dispute where the Panel found that the selection of the CA occupational standard for public accounting was not inconsistent with the *Agreement*.

**The Panel finds that the selection of the CA occupational standard as the occupational standard for the practice of public accounting is not in itself inconsistent with the *Agreement*.**

### **5.2.2.2 Standards Related Principally to Competence**

The Complainant alleges that while it accepts that the Respondent may select its standard, the provisions of Article 707 require that it recognize equivalent competencies in the occupation of public accounting that have been recognized by other provinces. The Respondent does not do that when it requires a non-CA accountant qualified to

practice public accounting in his or her own province to apply for membership in the CA organization.

The Respondent agrees that the basis for determining whether a person is qualified to practice public accounting in Québec is whether they have met the training and education standards of a CA. However, it denies that its measures are inconsistent with the *Agreement*. It argues they are based on competence, are published or otherwise readily accessible, do not result in unnecessary delays in the provision of licenses and do not impose fees or other costs that are more burdensome than those imposed on its own workers. The reservation of a professional activity in favour of one of the recognized professional orders is permissible when, for consumer protection, it is established that only the members of that order possess the competencies required to perform that activity (Articles 25 and 26 of the *Professional Code*). Québec established that the competencies acquired by CAs constitute the appropriate level of protection to achieve this legitimate objective regarding public accounting.<sup>12</sup>

Reference is made to paragraphs 65 to 73 inclusive of the Respondent's Original Submission for details of requirements in place in Québec for admission to the Order of CA and CGA. Certain exceptions as contained in Articles 28 and 29 of the *CAA*, include right to audit school boards, financial services cooperatives under the *Cooperatives Act and Municipal Boards*.

There are reciprocity agreements in effect in all provinces for CAs. This is also true for CGAs and CMAs. And a non-CA accountant qualified to practice public accounting in his or her province may be granted full public accounting practice privileges in Québec, by applying to be a CA. The provisions of the various legislative measures are such that once conditions are met the party must be granted the license to practice.<sup>13</sup> But the Complainant argues that these measures do not provide any procedure to permit an objective assessment of the qualification required to practice public accounting. They simply restrict that practice in Québec, with limited exceptions, to CAs. The few exceptions noted in the *CAA* refer to audits that can be performed by members of a professional order of accountants subject to the provisions of the *Professional Code*. CGAs in Québec are subject to that *Code*.

The Panel notes that as a Party to the *Agreement*, the Respondent is required to recognize equivalent competencies in the occupation of public accounting acquired by accountants in other provinces. In making this observation, the Panel is mindful of the statement made by the CGA-Manitoba/Ontario Panel where it stated at page 15 of its report:

“This obligation flows from the combination of:

---

<sup>12</sup> Article 24 of the *Chartered Accountants Act*

<sup>13</sup> For details as to the applicable criteria for license, reference is made to the Québec's Reply Submission, paragraph 72 at page 24.

- the purpose of the Agreement which is "... to enable any worker qualified for an occupation in the territory of a Party to be granted access to employment opportunities in that occupation in the territory of any other Party...";
- the requirement in Article 707 to ensure that any measure related to licensing relates principally to competency";
- the requirement in Article 708 to "recognize the occupational qualifications required of workers of any other Party;" and
- the assertion by the Parties in paragraph 8 of Annex 708 that "it is recognized that the competencies and abilities can be acquired through different combinations of training and experience."

Read together, these provisions require a Party to the Agreement to recognize the occupational qualifications of a worker from any other jurisdiction where those qualifications have already been recognized by that jurisdiction, through licensing or other means, and to objectively assess the competencies of a worker against its own occupational standard in a manner that recognizes that competencies can be acquired by different means."

The Panel notes further that the obligations of the *Agreement* are not limited to workers who are licensed. Article 701 refers to workers "qualified for an occupation." The *Agreement* does not specify that the form of recognition of a worker's qualifications to perform an occupation must be specific legislation to regulate that occupation with an accompanying licensing regime. It is the view of the Panel that the recognition by a Party that a worker is qualified in an occupation can be by other means. Statutes that allow workers with membership in a certain professional association to practice that occupation are only one of those means.

To require that a non-CA accountant qualified to practice public accounting in his or her province simply apply to be a CA in Québec in order to practice public accounting in that province does not recognize the occupational qualifications of a worker from any other jurisdiction where those qualifications have already been recognized, nor does it give adequate recognition to the fact that the competencies required to practice public accounting can be acquired through a variety of combinations of training, education and experience. There does not appear to be any mechanism in Québec for recognizing the occupational qualifications of a non-CA accountant from another jurisdiction where those qualifications have already been recognized, nor for assessing the qualifications of non-CAs from other jurisdictions that would recognize that competencies can be acquired by different means. Without such mechanisms in place, it is difficult to conclude that Québec's public accounting measures relate principally to competence.

**Accordingly, the Panel finds that the Respondent's application of the CA occupational standard for public accounting to non-CA accountants from other jurisdictions where those qualifications have already been recognized does not relate principally to competence and is inconsistent with Articles 707(1)(a) and 708 of the *Agreement*.**

### **5.2.2.3 Constitutional Authorities**

In its written submissions and at the hearing, the Respondent argued that the *Agreement* does not override the legislative authority of the Province under the Constitution. According to the Respondent it has fulfilled its obligations under the *Agreement* and the Panel should not question the validity of provincial legislation or its application.

The Panel agrees that the *Agreement* does not in any way modify, limit or override the constitutional powers of the Parties to pass legislation within their sphere of responsibility. In this regard, the Panel refers as did the Respondent to Article 300 of the *Agreement*, which provides as follows:

“Nothing in this Agreement alters the legislative or other authority of Parliament or of the provincial legislatures or of the Government of Canada or of the provincial governments or the rights of any of them with respect to the exercise of their legislative or other authorities under the Constitution of Canada.”

The Panel is also mindful of Article 1722 (Limit on Jurisdiction) of the *Agreement*, which provides that the Panel has “no authority to rule on any constitutional issue.”

But the Panel notes that the *Agreement* contains undertakings of the signatory governments. By entering into the *Agreement*, the Parties agreed that past legislation, practice or policies may no longer be appropriate given the stated goals of the *Agreement*. These objectives are the reduction or elimination of barriers to the free movement of persons, goods, services and investment within Canada and the establishment of an open, efficient and stable domestic market (Article 100).

As the Farmers Dairy/New Brunswick Panel stated on page 30 of its report<sup>14</sup>:

“In signing the Agreement, the Parties recognized that constitutionally valid measures may be contrary to the Agreement and may need to be changed in order to achieve the objective of the Agreement. Having themselves emphasized the importance of the Agreement, the Parties ought to rigorously respect the commitments it contains.”

Pursuant to Article 708 the Parties have undertaken to mutually recognize the occupational qualifications required of workers of any other Party and to reconcile differences in occupational standards in the manner specified in Annex 708. Having undertaken that commitment, the Parties recognized that a constitutionally valid measure may be inconsistent with the objectives of the Agreement and may need to be changed. This is what the Parties agreed to do.

---

<sup>14</sup> Report of the Article 1716 Panel Concerning the Dispute between Farmers Co-operative Dairy Limited of Nova Scotia and New Brunswick Regarding New Brunswick’s Fluid Milk Distribution Licensing Measures, Winnipeg, Manitoba; September 13, 2003 (hereinafter Farmers Dairy/NB Panel Report).

### 5.2.3 Justification on the Basis of a Legitimate Objective

Paragraph 1 of Article 709 provides as follows:

“1. Where it is established that a measure is inconsistent with Article 706, 707 or 708, that measure is still permissible under this Chapter where it is demonstrated that:

- (a) the purpose of the measure is to achieve a legitimate objective;
- (b) the measure does not operate to impair unduly the access of workers of a Party who meet the legitimate objective;
- (c) the measure is not more mobility restrictive than necessary to achieve that legitimate objective; and
- (d) the measure does not create a disguised restriction to mobility.”

Paragraph 1 of Article 713 further refines the definition of “legitimate objective” as follows:

“1. In this Chapter...**legitimate objective** means one or more of the following objectives pursued within the territory of a Party:

- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal or plant life or health;
- (d) protection of the environment;
- (e) consumer protection;
- (f) protection of the health, safety and well-being of workers;
- (g) affirmative action programs for disadvantaged groups;
- (h) provision of adequate social and health services to all the geographic regions; and
- (i) labour market development...”

The Respondent asserts that, if the Panel determines that its measures regulating public accounting are inconsistent with Articles 707 and 708 of the *Agreement*, those measures are still permissible under Article 709 as a Legitimate Objective for consumer protection and the preservation of its capital markets.

In determining on this issue, the Panel is mindful of the following principles that have been enunciated in this regard by the CGA/Ontario Panel on page 19 of its report:

“It is the Panel’s strong view that, if the Agreement is to have any meaning, a Party must do more than simply assert that it has a legitimate objective to meet whenever it wishes to maintain a measure that is inconsistent with the Agreement. The onus must be on the



party to demonstrate clearly that there is a legitimate objective related to the public good and that there are no less mobility restrictive means of meeting that objective.”

On page 8 of its report<sup>15</sup> the MMT Panel indicated:

“The Party introducing an inconsistent measure must demonstrate that the measure is to achieve a legitimate objective. The Panel does not agree that the requirement of Article 404(a) [Legitimate Objective] is a simple requirement to show that the legislators or policy makers had declared the purpose to be a legitimate objective. Such an interpretation would open the door to Parties using the legitimate objective to adopt trade restricting measures, by a simple declaration that the measure was in pursuit of a legitimate objective.”

On page 23 of its report the Farmer’s Dairy /New Brunswick Panel confirmed as follows when interpreting the application of the Article 404 (Legitimate Objective):

“Pursuant to Article 404, in order for an Agreement-inconsistent measure to be permissible on the basis of Legitimate Objectives, it must be “demonstrated” that the measure is in conformity with each of paragraphs (a) to (d) of Article 404. In the Panel’s view, it is the responsibility of the Party asserting Legitimate Objectives to demonstrate that each paragraph of Article 404 is satisfied.”

The Panel agrees with these principles as enunciated by previous panels. The Party must clearly demonstrate that the measure pursues a legitimate objective; does not unduly impair access of persons, goods, services, or investments that meet the legitimate objective; is not more trade restrictive than necessary; and does not create a disguised restriction to trade.

The Panel recognizes that the availability of reliable financial statements is unquestionably critical for the protection of the consumer. It is also important that public accounting be performed by those who are competent to do so. In Québec, it is not just CAs who are qualified to practice public accounting. The Respondent’s professional framework itself provides for public accounting to be performed by CGA’s (reference section 28, 29 of the CAA). These provisions involve the auditing of some of Québec’s largest public institutions. Surely these institutions are receiving a similar level of service quality that would be provided by Québec CAs and are not thereby endangered.

The Respondent has also not provided evidence that less mobility restrictive means of meeting its objective of protecting the Québec consumer was considered and found to be inadequate. Such an analysis of alternatives to meeting a legitimate objective is essential for a Party to adequately demonstrate that it has met the tests of Article 709.

In the Panel’s view, the remedies that would be required to bring Québec’s public accounting licensing measures in conformity with the *Agreement* should not have a detrimental effect on the consumer. Accountants recognized as competent to practice public accounting in other jurisdictions practice under recognized national standards.

---

<sup>15</sup> Report of the Article 1704 Panel Concerning the Dispute Between Alberta and Canada Regarding the *Manganese-Based Fuel Additives Act*, Winnipeg, Manitoba; June 12, 1998 (hereinafter MMT Panel Report).

**The Panel finds that Québec’s public accounting measures that have been found to be inconsistent with the *Agreement* can not be justified under the provisions of Article 709.**

## **6. DETERMINATION OF IMPAIRMENT OF TRADE AND INJURY**

Article 1707(2) requires that the Panel’s report contain a determination, with reasons, as to whether the measures under review have impaired internal trade and caused injury.

The Complainant alleges that Québec’s public accounting measures have impaired internal trade in Canada by preventing competent public accountants from provinces like New Brunswick from practicing public accounting in Québec.

It further alleges that the injury suffered by Mr Légaré is not an isolated case. Other CGAs who practice public accounting in New Brunswick have experienced similar loss of benefit and opportunities.

The Complainant also alleges that it conducted a survey of its members who practice public accounting. The response was varied, from loss of accounts to restriction of joint partnership with Québec firms, to inability to practice in Québec, to welcoming the opportunity to practice in Québec.

As noted earlier in this report, the Panel has found that the Respondent’s public accounting measures, as applied to non-CA accountants recognized in their own province as qualified to practice public accounting, are inconsistent with the *Agreement* in that they do not relate principally to competence. Inasmuch as they do not adequately recognize the competencies of non-CA accountants that have been recognized as qualified to practice public accounting in other jurisdictions, the measures do not adequately mitigate the restriction to mobility and are an impairment to internal trade.

As to the issue of injury, the Panel is mindful of the determination of the Farmers Dairy /New Brunswick Panel, the relevant part of which reads as follows on page 28 of its report:

“With respect to injury, Complainant alleges that the denial of a fluid milk distribution license in New Brunswick has caused significant injury to Complainant’s prospects for growth and eroded its capability to respond to competition in the future. Complainant admits that it is difficult to quantify the extent of injury and submitted no documentation in that regards. The Panel notes that a complainant is not required under the Agreement to prove a demonstrate dollar amount to establish injury, nor is a Panel required to rule on the extent of injury. It is the view of the Panel that the denial of the opportunity to be considered for a fluid milk distribution licence in a manner that is fair and consistent with the Agreement is injury in itself, as is de denial of the opportunity to participate on an equal footing in the New Brunswick market.”

The Panel agrees with the statements of the Panel in that case and adopts the same reasoning in the present case. In the Panel’s view, the Complainant has demonstrated

that CGAs, to the extent they are qualified to practice public accounting, have been and are being injured by the Respondent's Agreement-inconsistent public accounting measures. It is not necessary for this Panel to find a specific dollar amount of injury. In the Panel's view the mere denial of the opportunity or competitive disadvantage that cannot be justified is injury itself.

**The Panel finds that the Respondent's public accounting measures that restrict access to the practice of public accounting by non-CA accountants recognized in other jurisdictions as qualified to practice public accounting have impaired internal trade and have caused injury.**

## **7. SUMMARY OF PANEL FINDINGS**

The summary of Panel findings below is provided for convenience only. The actual findings in the Report above and the reasoning and context within which they are made should be considered authoritative. Accordingly the Panel makes the following findings:

- 1. The Complainant has met the limitation provisions imposed by Article 1712(4) of the *Agreement*.**
- 2. Public Accounting is an occupation as defined by the *Agreement*.**
- 3. The CA occupational standard as the occupational standard for the practice of public accounting is not in itself inconsistent with the *Agreement*.**
- 4. Respondent's application of the CA occupational standard for public accounting to non-CA accountants from other jurisdictions where those qualifications have already been recognized does not relate principally to competence and is inconsistent with Articles 707(1)(a) and 708 of the *Agreement*.**
- 5. The Panel finds that Québec's public accounting measures that have been found to be inconsistent with the *Agreement* can not be justified under the provisions of Article 709.**
- 6. The Panel finds that the Respondent's public accounting measures that restrict access to the practice of public accounting by non-CA accountants recognized in other jurisdictions as qualified to practice public accounting have impaired internal trade and have caused injury.**

For greater certainty, it must be noted that the Panel is not making a determination as to whether or not New Brunswick CGAs are qualified to practice public accounting in

Québec. Such a finding is beyond the mandate and competence of the Panel. Further, the Panel is of the view that a finding on this issue is not necessary for the Panel to fulfill its terms of reference, which are to determine whether the measures at issue, and in particular the CAA and Regulations and the manner in which they are administered, are inconsistent with the *Agreement*.

## **8. PANEL RECOMMENDATIONS**

**The Panel recommends that the Respondent take whatever steps are necessary to ensure that the CAA and Regulations and all other Québec statutes that restrict access to the practice of public accounting by non-CA accountants recognized as qualified to practice public accounting by other Parties are made consistent with the *Agreement*.**

## **9. AWARD OF COSTS**

Article 1718(3) of the *Agreement* gives the Panel the discretion to award costs to a successful person in a proceeding. The Complainant has requested such an award in the amount of \$31,991.00 and has submitted a statement of costs to the Panel in support of the request.

The Panel agrees that an award of costs to the Complainant is justified in this case.

**The Panel awards costs to the Complainant in the amount of \$31,191.00 to be paid by the Respondent.**

Rule 52 of Annex 1706.1 (Panel Rules of Procedure) stipulates that operational costs shall be divided equally between disputants. Operational costs are defined as “all per diem fees and other disbursements payable to panellists for the performance of their duties as panellists including costs incurred by the panel for retaining legal counsel to provide advice on procedural issues.” The Panel confirms that the operational costs of the panel proceedings are to be divided equally between Complainant and Respondent in accordance with Rule 52 of Annex 1706.1. For greater certainty, the award of costs to be paid by Respondent is in addition to the operational costs to be paid by Respondent.

## **APPENDIX A:**

### **Participants in the Panel Hearing**

#### **Panel**

Michel Desjardins (Chair)  
Elizabeth Cuddihy  
Phyllis Smith

#### **Certified General Accountants - New Brunswick**

##### Spokespersons

Pierre E. Roger, Borden Ladner Gervais LLP, Counsel to CGA-NB  
Gerry H. Stobo, Borden Ladner Gervais LLP, Counsel to CGA-NB  
Robert Knox , R.H. Knox & Associates, Advisor on Internal Trade to CGA-NB

##### Other Participants

Terry LeBlanc, FCGA, CGA-NB's National Representative  
Alain Girard, Président-directeur général, CGA-Québec  
Carole Presseault, Vice-President, Government and Regulatory Affairs, CGA-Canada

#### **Quebec**

##### Spokespersons

Me Jean-François Jobin, Lawyer, ministère de la Justice du Québec  
Me Jean-François Lord, Lawyer, ministère de la Justice du Québec

##### Other Participants

Me Jocelyne Roy, Lawyer, Office des professions du Québec  
Me Eric Thérout, Lawyer, ministère de la Justice du Québec  
Me Pierre-Yves Vachon, Lawyer, ministère de la Justice du Québec  
Jacques Vachon, Labour Mobility Coordinator, ministère de l'Emploi et de la  
Solidarité sociale

