Tab 1

Report of Article 1703 Panel Regarding the Dispute between Manitoba and Ontario Concerning Ontario's Notice of Measure with respect to Public Accountants, January 13, 2012.

Report of Article 1703 Panel Regarding the Dispute between Manitoba and Ontario Concerning Ontario's *Notice of Measure* with respect to Public Accountants

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EXECUTIVE SUMMARY

On November 6, 2009, Ontario issued a *Notice of Measure* claiming that material differences exist among the provinces/territories in respect of the competencies and standards established for licensing or authorization to practise public accounting and therefore, to protect consumers, the qualifications of individual applicants would be assessed against Ontario's public accounting certification requirements.

Manitoba objected on the grounds that the Ontario licensing regime causes injury to CGAs certified in other provinces wishing to practise public accounting in Ontario and is inconsistent with the Agreement on Internal Trade (AIT). Manitoba was joined by Alberta, British Columbia and Saskatchewan as Intervenors.

The Panel reviewed submissions from all Parties to the dispute and held a public hearing in Toronto on November 29, 2011.

The Panel finds that:

1) **Ontario's *Notice of Measure* is inconsistent with Article 706.1 of the AIT.**
2) **Ontario's *Notice of Measure* concerning Public Accountants cannot be justified under the provisions of Article 708 as necessary to achieve a legitimate objective.**
3) **The Public Accountants Council of Ontario and the Certified General Accountants of Ontario are subject to the terms of the Agreement on Internal trade and Ontario has an obligation to ensure that both non-governmental organizations comply.**
4) **The *Notice of Measure* has impaired or would impair internal trade and has caused or would cause injury.**

The Panel recommends that:

1) **Ontario withdraw its *Notice of Measure* concerning Public Accountants.**
2) **Ontario ensure that its regulatory authorities comply with Ontario's AIT obligations and, in particular, allow CGAs certified to practise public accounting in the jurisdictions of all Parties to be certified to practise public accounting in Ontario without any requirement for any material additional training, experience, examinations or assessments.**
3) **Ontario complete the necessary steps to bring itself into compliance with the AIT by April 15, 2012.**
4) **All Parties take steps to reinvigorate consultations with the other Parties directly or through the appropriate regulatory authorities to develop a consistent standard for public accountants across the country.**
5) **Ontario carefully consider all provisions of the AIT in its efforts, and those of its regulatory bodies, to revise its measures with respect to public accounting.**

DEFINITIONS AND ABBREVIATIONS

Agreement or AIT	Agreement on Internal Trade
CAAS	Canadian Auditing and Assurance Standards
CAASB	Canadian Auditing and Assurance Standards Board
CGA	Certified General Accountant
CGAC	Certified General Accountants Association of Canada
CGAM	Certified General Accountants Association of Manitoba
CGAO	Certified General Accountants of Ontario
CICA	Canadian Institute of Chartered Accountants
CMAM	Certified Management Accountants of Manitoba
CPAB	Canadian Public Accountability Board
FLMM	Forum of Labour Market Ministers
ICAO	Institute of Chartered Accountants of Ontario
Notice of Measure	*Notice of Measure* to Achieve a Legitimate Objective under Chapter 7 of the Agreement on Internal Trade, Government of Ontario, Nov. 6, 2009
PAA	Public Accounting Act, Ontario, 2004
PACO	Public Accountants Council for the Province of Ontario
SMAO	Society of Management Accountants of Ontario

1. INTRODUCTION

This is the report of a dispute resolution panel (the Panel) established under the *Agreement on Internal Trade* (the Agreement or AIT) to address a dispute brought forward by Manitoba (the Complainant) under Article 1703 (Request for a Panel) against Ontario (the Respondent) concerning a *Notice of Measure* by Ontario regarding the practice of public accounting in Ontario. Alberta, British Columbia and Saskatchewan joined the Complainant as Intervenors (the Intervenors).

The AIT was entered into in 1995 by the Governments of Canada, ten (10) provincial governments and two (2) territorial governments "to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investment within Canada and to establish an open, efficient and stable domestic market".

On July 18, 2008, the Premiers, through the Council of the Federation, agreed to amend the provisions on labour mobility in Canada to "provide that any worker certified for an occupation by a regulatory authority of one province or territory, shall be recognized as qualified to practise that occupation by other provinces and territories". The result was a revised Chapter Seven, which entered into force on August 11, 2009.

This dispute is the first to be considered by a panel under the revised Chapter Seven of the AIT. While Chapter Seven provides for persons certified in one province or territory to be certified in other provinces, it allows for exceptions where it can be demonstrated that an exception is necessary to meet a legitimate objective.

On November 6, 2009, Ontario issued a *Notice of Measure* claiming that material differences exist among the provinces/territories in respect of the competencies and standards established for licensing or authorization to practise public accounting and therefore, to protect consumers, the qualifications of individual applicants would be assessed against Ontario's public accounting certification requirements.

Manitoba objected and initiated proceedings under Chapter Seventeen of the AIT (Dispute Resolution Procedures). As provided under the Chapter, this Panel Report contains:

(a) findings of fact;
(b) a determination, with reasons, as to whether the measure in question is or would be inconsistent with this Agreement;
(c) if an affirmative determination has been made under (b), a determination, with reasons, as to whether the measure has impaired or would impair internal trade and has caused or would cause injury;
(d) recommendations, if requested by a Disputing Party, to assist in resolving the dispute;
(e) where applicable, and at the discretion of the Panel, a stipulation of the period within which the Complaint Recipient must comply with this Agreement, and

(f) a determination as to apportionment of operational costs.

2. COMPLAINT PROCESS

On November 16, 2010, the Complainant initiated dispute resolution proceedings with the Respondent in relation to the *Notice of Measure to Achieve a Legitimate Objective under Chapter Seven of the Agreement on Internal Trade.* Under Article 1702.1 of the AIT the Complainant requested consultations with the Respondent.

Consultations between the Complainant and the Respondent, with the participation of the Governments of Alberta, British Columbia and Saskatchewan, occurred between November 17, 2010 and June 10, 2011. The consultations were not successful and, on July 12, 2011, the Complainant formally requested that a dispute resolution panel be established under Article 1703.1 of the AIT. On July 18 and 19, the Governments of Alberta, British Columbia and Saskatchewan provided notice of their intent to participate in the panel proceedings as Intervenors.

In a ruling on September 13, 2011, the Panel agreed to permit Manitoba, as the Complainant, to file a supplementary written submission by October 25, 2011 in response to Ontario's submission; the Panel also agreed to accord Ontario, as the Respondent, the opportunity to file a counter supplementary written submission by November 4, 2011. On October 17, 2011, the Panel denied a request by British Columbia as Intervenor, to file a supplementary submission.

On October 18, 2011, a conference call took place involving the Panel and counsel for the Complainant and the Respondent to discuss procedural issues, including the use of expert advisors at the hearing. On October 31, 2011, the Panel advised disputing Parties of time allocations at the public hearing.

On November 18, the Panel met by conference call to discuss a request from the Complainant that certain attachments to the Respondent's submission contained proprietary and confidential information and, under Rule 18 of Annex 1705(1) of the AIT, not be disclosed publicly. The Panel ruled against the request; however, on November 28, 2011, the Panel concurred with the agreement by the Parties that one attachment be withheld.

On November 29, 2011, the Panel met in Toronto, Ontario to hear oral presentations from the Complainant, Respondent and Intervenors. The hearing was open to the public.

3. THE COMPLAINT

3.1 Position of the Complainant

Article 100 of the AIT sets out clearly the objective of the AIT which is:

> to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market.

In 2009, the federal, provincial and territorial governments unanimously agreed to strengthen labour mobility in the country by adopting a revised Chapter Seven (Labour Mobility). The particular obligation, in Article 706.1 specifies that:

> any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.

Article 706.1 is subject to some qualifications, but those qualifications are specific and limited. Article 708 allows for an exception to achieve a "legitimate objective". However, any deviations from the obligations of Article 706.1 are permissible only if they are designed to meet a specified and demonstrable purpose and only if the deviations are minimized to the extent necessary to meet that purpose.

The onus is on the Party adopting the measure to demonstrate that it is necessary to meet the legitimate objective claimed. The Respondent asserts that the *Notice of Measure* regarding Ontario's public accounting measures is designed to achieve the legitimate objective of consumer protection. The effect of the *Notice of Measure* is that it prohibits CGAs certified in other provinces from practicing public accounting in Ontario unless the applicant undergoes an assessment of his or her qualifications as compared against Ontario's public accounting standards.

The Respondent has demonstrated that only the "educational pathway" in other provinces is different. It has not demonstrated that there is any "material deficiency" in the skills, area of knowledge or ability of CGAs certified in other provinces that have attained their certification through a different pathway.

The Complainant stressed that all provinces adopt consumer protection and the public interest as cornerstones in their professional regulatory models. All provinces and territories, with the exception of Ontario, allow CGAs certified in other provinces to practise public accounting in their jurisdiction.

The Respondent's *Notice of Measure* is inconsistent with Article 706.1 of the AIT and cannot be justified by Article 708.

The Complainant asks the Panel to find that:

a) Ontario's public accounting measures are inconsistent with the AIT; and
b) Ontario's measures impair internal trade and cause injury.

The Complainant requests that the Panel recommend:

a) Ontario withdraw or remove its *Notice of Measure*;

b) Ontario take steps necessary to cause certified public accounting CGAs from outside Ontario to be recognized for the practice of public accounting as CGAs in Ontario. This could include recommending that Ontario take steps in relation to the Public Accountants Council of Ontario and Certified General Accountants of Ontario;
c) Ontario consider causing PACO to make or permit similar changes in relation to the other two accounting bodies;
d) Ontario immediately comply with the AIT; and
e) Ontario pay the full share of operational costs of this dispute.

3.2 Position of the Intervenors

The Intervenors (Alberta, British Columbia and Saskatchewan) support the position of the Complainant that Ontario's measures are inconsistent with the AIT and Article 706; that the measures do not meet the requirement of Article 708; and that the Ontario licensing regime causes injury to CGAs certified in other provinces wishing to practise public accounting in Ontario.

The Intervenors assert that the overall objective, spirit and commitments of the AIT, and particularly Chapter Seven, are at risk of being undermined. Article 708 is a limited exception which should be applied narrowly. No province should be allowed to set a standard that restricts labour mobility without clearly demonstrating the need for the measure to meet a legitimate objective.

The Intervenors do not believe that the Ontario market for public accounting is substantially different than public accounting in all other provinces of Canada.

4. THE RESPONSE

In 2004, Ontario adopted the *Public Accounting Act* establishing the regulatory framework for public accountants. This framework was based on expert advice that stressed the need to protect the public. The standards that were established are consistent with international standards. Ontario is the financial markets capital of Canada and public accountants must be held to the highest standards to protect consumers. Ontario's standards are the minimum necessary to achieve that goal.

The Respondent asserts that Ontario's standards and its regulatory framework are consistent with Chapter Seven of the AIT. Article 708 entitles Parties to impose additional measures in order to attain a legitimate objective, including consumer protection.

Expert advisors retained by the Public Accountants Council of Ontario (PACO), evaluated the education, training, examination and practice review standards of the accounting bodies in Ontario against the standards established by PACO[1]. These expert advisors found that the

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[1] *Brondesbury Report* (2006)

Certified General Accountants – Ontario (CGAO) had substantial and significant differences in education, examination and other practices that resulted in an actual material deficiency in skill, area of knowledge and ability to practise public accounting[2]. CGAO has now upgraded its program to meet the standards set by PACO.

At the time of the 2008 *Brondesbury Report*, CGAO's practices were essentially the same as other CGA bodies in Canada, so the results of the evaluation, the Respondent submits, could properly be applied to the other CGA provincial organizations. Ontario therefore is justified in applying the *Notice of Measure* to CGAs certified to practise public accounting by those CGA bodies.

In its presentation to the Panel, the Respondent introduced two expert advisors[3] who were part of the evaluation leading to the 2008 *Brondesbury Report.* Counsel for the Respondent engaged their expert advisors through a question and answer format[4].

In their comments, the expert advisors reviewed their work from 2006 to 2008 to examine whether CGAO public accounting standards were substantially equivalent to PACO standards. They made specific reference to certain education and course issues that they felt were shortcomings in CGA Canada's programs and standards adopted by all CGA bodies across Canada at the time of their review.[5] Reference was made to integration of specific competencies and sequencing of courses.

5. PANEL FINDINGS

5.1 Introduction

The Panel believes that the specific issues of this, and any, dispute should be considered in the context of the general objectives of the AIT and the history of its evolution, in this case the recent revisions to Chapter Seven (Labour Mobility). To better interpret the terms of the AIT, it is necessary to have an understanding of the intent of the decision-makers who adopted the Agreement.

Article 100 sets out the general objective of the AIT:

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[2] *Brondesbury Report* (2008)

[3] Gary A. Porter, FCGA, CA, member of The Brondesbury Group Evaluation Team
Dr. Edwin L. Weinstein, Ph.D., C.Psych., President of The Brondesbury Group

[4] The question and answer format was an unusual approach to AIT hearing proceedings. To allow a full opportunity for the Respondent to present its position, the Panel allowed the process. In retrospect, the Panel is of the view that the question and answer format was not the most productive. While input from expert advisors can be helpful to panel hearings, straightforward presentations are preferable. The Panel recommends that future panels avoid a question and answer format since these proceedings are not, and should not be regarded as, a court of law.

[5] The Ontario expert advisors acknowledge that CGA Canada has upgraded its standards since the 2008 *Brondesbury Report.*

> It is the objective of the Parties to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. All Parties recognize and agree that enhancing trade and mobility within Canada would contribute to the attainment of this goal.

The recent history of Chapter Seven gives insight into the intent of the Premiers with respect to the revisions to the labour mobility provisions of the Agreement adopted in 2009.

In August of 2007, Premiers reaffirmed the critical importance of a stronger and more effective national AIT. On labour mobility, the Premiers agreed that governments must work to bring all regulated occupations into full compliance by April 2009[6]. In July 2008 they agreed to amend the AIT by January 1, 2009. The official Communiqué stated:

> These amendments will provide that any worker certified for an occupation by a regulatory authority of one province or territory shall be recognized as qualified to practise that occupation by all other provinces and territories. Premiers further directed that any exceptions to full labour market mobility will have to be clearly identified and justified as necessary to meet a legitimate objective...[7]

The result of this clear direction from the Premiers was the Ninth Protocol of Amendment to the AIT (August 11, 2009) which replaced the former chapter on labour mobility with the current Chapter Seven.

The new Chapter Seven states as its purpose in Article 701:

> The purpose of this Chapter is to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility in 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. (Emphasis added)

The Panel believes the use of the phrase "in particular" draws specific attention to the issue of workers certified by regulatory authorities.

The new Chapter Seven contains no reference to competency as a measure. That is a marked change from the former Chapter Seven. It must be assumed that the intent of the new Chapter was to accept that certification by any of the Parties carried with it a recognition that the person certified was "competent".

Taken together, all of these points lead the Panel to conclude that:

1) The Parties to the AIT want a strong Agreement that places an emphasis on labour mobility.
2) Regulated occupations were a focus of the 2009 change.
3) Certification by one Party should be accepted by all other Parties.
4) The bar to justify exceptions should be a high one.

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[6] *Communiqué,* The Council of the Federation, August 10, 2007
[7] *Communiqué,* The Council of the Federation, July 18, 2008

5.2 Article 706: Certification of Workers

The first issue for the Panel to address is whether Ontario's *Notice of Measure* regarding Public Accountants is consistent with Article 706 of the Agreement. Article 706 contains a number of provisions, but the most significant to this dispute is 706.1 which reads:

> Subject to paragraphs 2, 3, 4 and 6 and Article 708, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.

The Panel has reviewed the definitions in Article 711 for **occupation, Regulatory Authority of a Party** and **certified** and finds that:

a) public accounting is a distinct occupation within the meaning of Article 711 and is subject to the provisions of the AIT;
b) CGA Manitoba and the CGA organizations in the Intervenor provinces all have been delegated authority to regulate certified general accountants including those that practise public accounting; and
c) each of the Complainant and Intervenor CGA bodies have various mechanisms to certify CGAs that are authorized to practise public accounting

The Panel therefore is of the opinion that CGAs certified to practise public accounting in Manitoba and the Intervenor provinces meet the criteria of Article 706.1

Ontario's *Notice of Measure* of November 6, 2009 requires that the qualifications of CGAs from all other provinces be assessed against Ontario's public accounting certification requirements.[8] Article 706.1 is quite clear that certification of a CGA from another province or territory shall occur "**without any requirement for** any material additional training, experience, examinations or **assessments** as part of that certification procedure". (Emphasis added)

The use of the word "shall" in Article 706.1 does not allow discretion on the part of the regulatory authority. The applicant "shall" be certified without any requirement for an assessment.

The Respondent does not claim that its *Notice of Measure* is not inconsistent with Article 706.1 of the AIT. Its position is based on the exception allowed in Article 708.

The Panel finds that Ontario's *Notice of Measure* is inconsistent with Article 706.1 of the AIT.[9]

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[8] *Notice of Measure to Achieve a Legitimate Objective under Chapter 7 of the Agreement on Internal Trade,* Government of Ontario, November 6, 2009

[9] In some of the submissions by the Complainant and Intervenors, mention was made that the *Notice of Measure* is also inconsistent with Article 700 (and by reference to Articles 401, 402, 403) and 701. The Panel would concur; however, it believes that inconsistency with these articles of the AIT is subsumed by inconsistency with Article 706, specifically Article 706.1

5.3 Article 708: Legitimate Objective

All Parties agree that the focus of the dispute is whether Ontario's *Notice of Measure* is justified under Article 708: Legitimate Objective. Article 706.1 states that

> **Subject to** paragraphs 2, 3, 4 and 6 and **Article 708**, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure. (Emphasis added)

The Respondent contends its *Notice of Measure* is consistent with Article 708 and therefore with the AIT.

The main provisions of Article 708 as it relates to this dispute read:

> 1. Where it is established that a measure falling within the scope and coverage of this Chapter is inconsistent with Article 401, Article 402, Article 403 or Article 705, or paragraphs 1, 2 or 5 of Article 706, 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 is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and
>
> (c) the measure does not create a disguised restriction to labour mobility.
>
> 2. For greater certainty, for purposes of the application of paragraph 1(b) of Article 708 to paragraph 1, 2 or 5 of Article 706, a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective. In the case of a difference related to academic credentials, education, training or experience, the Party seeking to impose an additional requirement must be able to demonstrate that any such difference results in an actual material deficiency in skill, area of knowledge or ability. As an example, the imposition of a requirement for additional, education, training or experience may be justified under paragraph (1)(b) where a Party can demonstrate that:
>
> (a) there is a material difference between the scope of practice of the occupation for which the worker is seeking to be certified in its territory and the scope of practice of the occupation for which the worker has been certified by the regulatory authority of another Party; and
>
> (b) as a result of that difference, the worker lacks a critical skill, area of knowledge or ability required to perform the scope of practice of the occupation for which the worker seeks to be certified.

The definition of Legitimate Objective appears in Article 711:

> **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**; (Emphasis added)
(f) protection of the health, safety and well-being of workers;
(g) provision of adequate social and health services to all its geographic regions; and
(h) programs for disadvantaged groups;

The central question therefore: "Is the inconsistency of the Ontario *Notice of Measure* under 706.1 saved by Article 708?"

The discussion of this question can be divided into several components:

1) The relative emphasis accorded to Article 706 versus Article 708.
2) Consumer protection measures in the context of the AIT.
3) Onus with respect to Article 708.
4) The Ontario market compared to the rest of Canada.
5) Differences in certification requirements between CGAs in Ontario and the rest of Canada.
6) Actual material deficiency in skill, area of knowledge or ability.
7) Harm to consumers.
8) Restrictiveness of the measure.

5.3.1 Article 706 vs. Article 708

The use of the legitimate objectives exception of Article 708 can be a very powerful tool. The Respondent asserts that the term "legitimate" shows that the measures adopted under Article 708 are consistent in principle with the rest of Chapter Seven, not an aberration or derogation from what the Chapter is about.

Again, it is instructive to return to the Premiers' statement of July 18, 2008. In referring to the amendments to the AIT, the Communiqué stated:

> These amendments will provide that any worker certified for an occupation by a regulatory authority of one province or territory shall be recognized as qualified to practise that occupation by all other provinces and territories. Premiers further directed that any exceptions to full labour market mobility will have to be clearly identified and justified as necessary to meet a legitimate objective such as protection of public health and safety.[10]

The words are noteworthy. The sentence refers to "any exception" to full labour market mobility. It also uses words like "clearly identified" and "justified". Further, Article 701 uses the phrase "in particular" in reference to workers certified by a regulatory body.

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[10] *Communiqué,* The Council of the Federation, July 18, 2008

Taken together, it clearly suggests that the intent of Chapter Seven was to provide unimpeded labour mobility and that Article 708, while perhaps not an aberration from what Chapter Seven is all about, is certainly a derogation from the obligations embedded in Article 706.1.

Furthermore, if Article 708 is to be considered as possessing equal weight with Articles 701 and 706.1, Parties could conceivably utilize Article 708 to circumvent their obligations under the Chapter. A Party could declare a measure as necessary to achieve a legitimate objective and stop there. The impact on the integrity of the AIT and Chapter Seven would be severe.

The Panel is of the view that Article 708 is an exception to the obligations of the Chapter and specifically Article 706.1 and its use should be narrowly construed and strictly applied.

5.3.2 Consumer Protection

The use of consumer protection as a legitimate objective to bypass the obligations of Article 706.1 presents challenges. Consumer protection regulations inevitably interfere with the marketplace. Therefore they must be considered very carefully before being applied to determine if the benefit to consumers overrides the impediments to the free flow of persons, goods and services.

Chapter Seven contains several provisions in Articles 706.3 and 706.4 designed to protect consumers. Article 708 provides for the possibility that there might be a need for some other measure to protect consumers not specifically identified in the existing provisions.

In this dispute, the Respondent asserts that it requires a specific set of standards to protect consumers of public accounting services in Ontario. It claims that the standards for certification of CGAs in other provinces are inadequate to protect Ontario consumers. However, the other Parties also claim they place an equally high priority on consumer protection in their regulatory regime and that their own standards are sufficient to accomplish that objective. All Parties, with the exception of the Respondent, are satisfied that the regulatory regimes in each of their jurisdictions are adequate to protect consumers and all allow movement of CGAs from one province or territory to another.

If the debate on consumer protection is to centre on whose system protects consumer interests better, it is difficult to understand how Chapter Seven can have any meaningful positive impact on labour mobility.

5.3.3 Onus

An important issue with respect to Article 708 is onus. It is not sufficient to simply state that a legitimate objective exists. A Party must clearly demonstrate its necessity. The Premiers' Communiqué of July 18, 2008 stated that exceptions must be "clearly identified and justified as necessary to meet a legitimate objective".

Article 708.1 of the AIT states that a:

> ...measure is still permissible under this Chapter **where it can be demonstrated that:** (Emphasis added)
>
> (a) the purpose of the measure is to achieve a legitimate objective;

Further, Article 708.2 states that:

> ...**the Party seeking to impose an additional requirement must be able to demonstrate** that any such difference results in an actual material deficiency in skill, area of knowledge or ability. (Emphasis added)

The conclusion the Panel draws is that the onus falls on the Respondent to justify its *Notice of Measure.* In doing so, it must do more than allege or surmise. It must substantiate that its *Notice of Measure* is necessary to protect consumers. It falls to the Respondent to demonstrate the failings in the other jurisdictions. The onus is not on the Complainant or the other provinces to prove they have an adequate system in place to protect consumer interests. Nor is the onus on an individual certified in another province to prove to Ontario that he or she has a certain level of skill, area of knowledge or ability.

5.3.4 Ontario Market

The Respondent appears to claim that its market is unique. It states it has "more high risk consumers than Manitoba because it has over 80% of Canada's capital markets and international companies"[11] and that "Ontario is the financial markets capital of Canada"[12]. In its oral presentation, it reiterates these claims referring to the Toronto Stock Exchange, the presence of larger private concerns using substantial amounts of bank credit, private investment funds and institutional investors. It also refers to substantial layers of government and the size of government entities (e.g. if Toronto were a province it would be the third largest in Canada).

The Agreement refers to "scope of practice" in Article 708.2 as follows:

> As an example, the imposition of a requirement for additional, education, training or experience may be justified under paragraph (1)(b) where a Party can demonstrate that:
>
> (a) there is a material difference between the scope of practice of the occupation for which the worker is seeking to be certified in its territory and the scope of practice of the occupation for which the worker has been certified by the regulatory authority of another Party; and
>
> (b) as a result of that difference, the worker lacks a critical skill, area of knowledge or ability required to perform the scope of practice of the occupation for which the worker seeks to be certified.

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[11] Ontario Submission, paragraph 73, page 29
[12] Ontario's Response, paragraph 8, page 3

This reference was to an example, nevertheless given the Respondent's claim, it bears exploring whether the characteristics of the Ontario market result in a difference in the scope of practice of public accounting in Ontario compared to the rest of Canada.

All accountants who provide public accounting services in Canada, whether CAs or CGAs must follow the same standards, including the Canadian Auditing and Assurance Standards (CAAS) set by the Canadian Auditing and Assurance Standards Board (CAASB). The Canadian Public Accountability Board (CPAB) inspects firms that audit public companies in Canada. Both of these bodies set standards to protect consumers. Canadian tax authorities do not appear to make a distinction between financial statements audited by CGAs across Canada regardless of province. Similarly, there is no indication the major Canadian banks make any distinction in the work product of CGAs in Ontario versus the rest of Canada. With respect to government entities, all provinces have several layers of government, some large, some small.

Ontario may have a greater number of larger companies, both public and private, than other provinces, but size does not appear to be significant in any determination of the need for higher standards. The Respondent, in its Response to the Reply Submission of the Complainant states:

> Ontario does not say that relative size on its own is the basis for maintaining a trade barrier. The nature of the market is different.[13]

If the nature of the market is different, that would suggest the nature of public accounting is different in Ontario. In terms of the AIT, that position would suggest that the scope of practice is different. Yet, in its oral presentation, the Respondent stated it is not Ontario's position that there is a difference in scope of practice but rather there is a difference between what CGAs are doing in public accounting in Manitoba and what they are doing in Ontario.

The Panel finds it difficult to understand the Respondent's position. If what CGAs in Manitoba do is different than what CGAs in Ontario do, surely that must mean the scope of practice is different.

In summary, it appears the Respondent is saying size is not relevant and there is no difference in scope of practice. On these points, the Panel agrees with the Respondent.

The Panel, after reviewing the issue, concludes that there is no meaningful difference in the nature of the Ontario market compared to the rest of Canada and that the nature and scope of practice of public accounting in Ontario is no different from the rest of Canada.

5.3.5 Differences in Certification

There appears little question that the educational requirements for certification of a CGA in Ontario are different from those in the rest of Canada. To use a term that arose frequently in

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[13] Response of Ontario to Reply Submission of Ontario, paragraph 98, page 29.

the submissions and the oral presentations at the hearing, the "pathway" to certification can, and does, differ between provinces and territories.

After an intensive review in 2006 and 2008, a series of standards were adopted by PACO that govern certification processes for all public accountants in Ontario, including CAs, CGAs and Certified Management Accountants (CMAs). It appears the Ontario process places a great deal of weight on the education pathway and the specific courses that are required for certification as a public accountant in Ontario. Some of these courses and examinations are different than those required in other provinces.

All provincial CGA organizations incorporate education requirements in their certification processes. All have an "education pathway". The courses and examinations might not all be identical and, in particular, Ontario has established a different standard in this regard.

However, in addition to the education requirement, the certification processes also can involve work experience and training under the supervision of someone certified to practise public accounting. In the submissions and oral presentations little reference was made to these other components that are, or can be, part of the certification process in various provinces or territories.

The Respondent claims that the absence of certain courses and examinations is significant and leads to its position that CGAs certified in other provinces may be deficient in skills, area of knowledge or ability.

The Complainant and Intervenors acknowledge differences in the education pathway; however, they do not accept that these differences result in a deficiency in skill, area of knowledge or ability as it relates to CGAs certified in their jurisdictions.

The Panel accepts that there are differences in the education pathways. Those differences, however, are not the central issue in this dispute. As stated in Article 708.2:

> ... a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective.

The Panel also notes that the above sentence recognizes that certification processes can involve more than just education programs.

5.3.6 Material Deficiency

The issue in this dispute centres on the following provision of Article 708.2:

> In the case of a difference related to academic credentials, education, training or experience, the Party seeking to impose an additional requirement must be able to **demonstrate that any such difference results in an actual material deficiency in skill, area of knowledge or ability**. (Emphasis added)

Identifying a difference is not sufficient. The Party imposing the measure must be able to demonstrate that there is an actual, material deficiency in skills, area of knowledge or ability. There must be a deficiency, it must be actual, and it must be material. In this dispute, the Respondent bears the burden of meeting that requirement.

From 2006 to 2008, Ontario's expert advisors, The Brondesbury Group, assessed the CGA Ontario education program in the context of the standards set by PACO. In carrying out that task, they reviewed the CGA Canada program and identified, in their view, several shortcomings. Since all CGA provincial organizations utilize the CGA Canada education program, they submit that the CGA Manitoba education pathway suffers the same shortcomings. In particular, they point to the absence of several courses in the CGA Canada program that they believe results in a material deficiency in the competence of CGAs from other provinces to perform public auditing. The foundation of the Respondents position is that the absence of these courses and examinations is sufficient to demonstrate a material deficiency.

In the introduction to this section of the Report, the Panel concluded that the bar to justify exceptions to the objective of labour mobility is a high one. In another part of this section, it also concluded that the use of Article 708 should be narrowly construed and strictly applied. On that basis, the Panel has been looking for real factual confirmation that there is an actual material deficiency in skills, area of knowledge or ability of CGAs from Manitoba and the rest of Canada.

What the Respondent has presented is an opinion by its expert advisors that they found the CGA Canada education program in 2008 to have shortcomings.[14] Neither the Respondent nor their expert advisors investigated the CGA Manitoba certification program or that of the other provinces directly. They assumed that all CGA Canada programs were adopted by the other provincial CGA bodies without modification. Perhaps that is so, but to draw conclusions by inference rather than direct examination falls short of the level of analysis the Panel would expect of a Party attempting to demonstrate an actual material deficiency.

The Panel also is of the opinion that focussing only on the education pathway is insufficient to demonstrate an actual material deficiency in skills, area of knowledge or ability. Certification can also involve work experience and training. There is no indication that the Respondent or the Brondesbury Group investigated any of those components of the certification process in other provinces to determine if a perceived shortcoming in the education pathway might have been offset by the work experience and training requirements of the certification process.

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[14] It should be noted that the CGA Canada education program has been changed and is now considered improved by the same expert advisors.

In summary, the Panel does not believe the Respondent has demonstrated that an actual material deficiency in skills, area of knowledge or ability in CGAs from Manitoba and the rest of Canada exists to justify imposition of the *Notice of Measure*.

5.3.7 Harm to Consumers

The Respondent claims Ontario consumers will be hurt if CGAs from Manitoba and other provinces and territories, certified to practise public accounting in their jurisdictions, are allowed to practise public accounting in Ontario. Nowhere does it provide any solid facts to support that claim. In fact, in its response to the Manitoba reply submission, the Respondent states:

> Ontario submits that the deficiencies in education and examination found in the national CGA program supported and continue to support a conclusion that CGAs certified to do public accounting outside Ontario **risk** having an actual material deficiency.[15] (Emphasis added)

In the Panel's view, the Respondent's claim that a risk exists is mere conjecture. The Panel has seen nothing to substantiate any harm or even that a risk exists. No examples were brought forward to demonstrate that harm would be done. As described previously in this Report, major elements of the Ontario consumer audience do not appear to require additional protection. All accountants who practise public accounting must follow the standards set by Canadian Auditing and Assurance Standards Board (CAASB). The Canadian Public Accountability Board (CPAB) looks out for the interests of investors both large and small by inspecting firms (including CGAs) that audit public companies. Banks are the source of a significant portion of the financing required by companies both public and private. So too are institutional investors. Neither group can be classified as unsophisticated lenders or investors. There is no indication any of these groups have any difficulty accepting financial statements audited by CGAs from across the country. Major government entities and tax authorities must also be considered sophisticated consumers of the results of these audits or financial reviews. It is doubtful they require a higher level of consumer protection than that in place in other provinces.

It is also useful to look at the scope of this issue. In answer to a request from the Panel during the hearing, the following statistics concerning CGAs practicing public accounting in Canada were provided:

2,200 All of Canada, of which:
1,200 – British Columbia
500 – Alberta
76 – Saskatchewan
70 – Manitoba
16 – Ontario
300 – Quebec
? – Atlantic Canada

[15] *Ontario's Response*, paragraph 4, page 2

The major source of CGAs that might want to practise public accounting in Ontario would probably be those from Manitoba and Quebec, 70 from Manitoba and 300 Quebec. In all likelihood, the number actually interested in doing so would be significantly less.

The Panel believes that no harm to Ontario consumers will result from removal of the *Notice of Measure* and adherence by the Respondent to Article 706 of the AIT.

5.3.8 Article 708.1 (b)

Article 708.1 (b) states:

> Where it is established that a measure falling within the scope and coverage of this Chapter is inconsistent with Article 401, Article 402, Article 403 or Article 705, or paragraphs 1, 2 or 5 of Article 706, that measure is still permissible under this Chapter where it can be demonstrated that:
>
> > (b) the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective

The Panel will not make a specific finding on the consistency of Ontario's *Notice of Measure* with 708.1(b). Its decision is focussed on Article 708.1(a). However, the Panel would observe that the Ontario measure imposes a reverse onus on an applicant to demonstrate, through an individual assessment, that he or she has the skill, area of knowledge and ability to perform public accounting in Ontario. That is not consistent with the objective of Chapter Seven which places the onus on the Party imposing the restriction to show that there is an actual material deficiency in skill, area of knowledge or ability. In addition, an individual assessment can be a very subjective process. It does not point to a clear objective path for removal of the restriction.

5.3.9 Conclusion and Finding

In considering all of the issues reviewed in this section with respect to Article 708:

The Panel finds that the Ontario *Notice of Measure* concerning Public Accountants cannot be justified under the provisions of Article 708 as necessary to achieve a legitimate objective.

5.4 Article 703: Extent of Obligations

While the *Notice of Measure* in question was adopted by the Ontario government, it is enforced by CGA Ontario, which does so in order to comply with standards set by PACO. The levels of authority governing public accounting in Ontario are the following:

1) The legislative vehicle adopted by the Ontario Government is the *Public Accountants Act (PAA) 2004.*

2) The PAA authorizes PACO to set standards under which the direct regulatory authorities (ICAO, CGA and SMAO) operate.

3) CGAO is obligated by PACO standards and the *Notice of Measure* to conduct an assessment of an out-of-province candidate to determine if he or she is qualified to operate as a public accountant in Ontario.

Article 703.1 of the AIT states:

> 1. For the purposes of Article 102(1)(b) and (c) (Extent of Obligations), each Party shall, through appropriate measures, ensure compliance with this Chapter by:
>
> (b) its other governmental bodies and by **non-governmental bodies that exercise authority delegated by law**. (Emphasis added)

It is clear from Article 703.1(b) that Ontario has the obligation to ensure that PACO and CGAO comply with the AIT.

The Panel finds that the Public Accountants Council of Ontario and the Certified General Accountants of Ontario are subject to the terms of the Agreement on Internal trade and that Ontario has an obligation to ensure that both non-governmental organizations comply.

6. PANEL OBSERVATIONS – STANDARDS

Parties will face the challenge of reconciling the sometimes conflicting objectives of their desire to set standards and their obligations under the AIT.

All Parties reserve the right to establish standards applied within their own area of jurisdiction. Article 707 states:

> Each Party may adopt or maintain any occupational standard, and in doing so, may establish the level of protection that it considers to be appropriate in the circumstances.

Article 707 urges Parties to adopt occupation standards based on common interprovincial standards. However, it is understandable that Parties will not always be on the same wavelength with respect to the reach and speed of changes to standards. Some will want to move farther and faster than others. There is nothing inherently wrong with a Party wishing to increase the level of its standards. Nevertheless, in doing so a Party must ensure that its actions are consistent with the AIT. The issue becomes particularly problematic if the Party adopting those different or higher standards internally takes the additional step of imposing them on workers from outside its jurisdiction and, as a result, impairs labour mobility. In that circumstance, the Party faces the challenge of meeting the stringent test of Article 708.

Articles 707 and 405 of the AIT strongly encourage Parties to reconcile their differences and strive to adopt consistent standards. Engaging in interprovincial consultations and negotiations

can be slow and, at times, frustrating, but if the result is an improved set of interprovincial standards, Canada and every Party to the AIT benefit. If interprovincial agreement is not attainable, a Party adopting a higher standard internally might decide not to apply it to individuals certified in other provinces if it determines that the possible harm to consumers is limited and the ability to justify a restriction under Article 708 is small.

In this dispute, the Panel accepts that Ontario's objective is to improve the standards applied to the certification of public accountants. The Panel hopes that all Parties, either directly through the Forum of Labour Market Ministers (FLMM) or indirectly through CGA Canada and all other CGA organizations, arrive at a consistent set of standards across the country concerning certification of public accountants. Indeed, from comments heard during the oral presentations at the hearing, it appears that objective might be within reach in the near future.

7. DETERMINATION OF IMPAIRMENT OF TRADE AND INJURY

Article 1706(3)(c) requires that the Panel Report contain:

> a determination, with reasons, as to whether the measure has impaired or would impair internal trade and has caused or would cause injury

The Complainant and the Intervenors allege that Ontario's public accounting measures impair internal trade and have caused, and continue to cause, injury. CGAs from the four provinces have been denied the opportunity to practise public accounting in Ontario. They assert that denial of opportunity constitutes injury in and of itself under the AIT and point to several other Panel Reports that support their position.

Ontario made only a slight reference to this issue (paragraph 79 of its submission) but did not elaborate.

The Panel concurs with the Complainant and Intervenors that Ontario's *Notice of Measure* has had the effect of restricting the ability of CGAs from Manitoba and the rest of Canada to practise public accounting in Ontario and therefore impairs trade.

The Panel has reviewed previous Panel rulings[16] and concludes that it is now well established that denial of opportunity in and of itself constitutes injury and, further, the Complainant is not required to find a specific amount of injury.

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[16] *Report of the Article 1716 Panel Concerning the Dispute Between Farmers Cooperative Dairy Limited of Nova Scotia and New Brunswick Regarding New Brunswick's Fluid Milk Distribution Licensing Measures*, 2002, pages 22-23; *Report of the Article 1704 Panel Concerning the Dispute Between Alberta/British Columbia and Ontario Regarding Ontario's Measures Governing Dairy Analogs and Dairy Blends*, 2004, pages 33-34; *Report of the Article 1716 Panel Concerning the Dispute Between the Certified General Accountants Association of New Brunswick and Quebec Regarding Quebec's Measures Governing the Practice of Public Accounting*, 2005, pages 22-23; *Report of Article 1702(2) Summary Panel Regarding the Pre-Existing Dispute Concerning Ontario's Measures Governing Dairy Analogs and Dairy Blends*, 2010, pages 25-26

The Panel finds that the *Notice of Measure* has impaired or would impair internal trade and has caused or would cause injury.

8. SUMMARY OF FINDINGS

The summary of 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 Panel finds that Ontario's *Notice of Measure* is inconsistent with Article 706.1 of the AIT.**

2) **The Panel finds that the Ontario *Notice of Measure* concerning Public Accountants cannot be justified under the provisions of Article 708 as necessary to achieve a legitimate objective.**

3) **The Panel finds that the Public Accountants Council of Ontario and the Certified General Accountants of Ontario are subject to the terms of the Agreement on Internal Trade and that Ontario has an obligation to ensure that both non-governmental organizations comply.**

4) **The Panel finds that the *Notice of Measure* has impaired or would impair internal trade and has caused or would cause injury.**

9. PANEL RECOMMENDATIONS

1) **The Panel recommends that the Respondent withdraw its *Notice of Measure* concerning Public Accountants.**

2) **The Panel recommends that the Respondent ensure that its regulatory authorities comply with Ontario's AIT obligations and, in particular, allow CGAs certified to practise public accounting in the jurisdictions of all Parties to be certified to practise public accounting in Ontario without any requirement for any material additional training, experience, examinations or assessments.**

Recognizing that the steps required of the Respondent to implement the recommendations of the Panel will require consultation with the regulatory authorities and time for the latter to comply,

3) **The Panel recommends that the Respondent complete the necessary steps to bring itself into compliance with the AIT by April 15, 2012.**

4) **The Panel recommends that all Parties take steps to reinvigorate consultations with the other Parties directly or through the appropriate regulatory authorities to develop a consistent standard for public accountants across the country.**

5) **The Panel Recommends that Ontario carefully consider all provisions of the AIT in its efforts, and those of its regulatory bodies, to revise its measures with respect to public accounting.**

10. ALLOCATION OF COSTS

Rules 55 to 57 of Annex 1705(1): Rules of Procedure of the Agreement give the Panel the discretion to apportion the operational costs of a Panel among the Disputants. The Panel considers a fair allocation of operational costs to be:

- 50% to Ontario
- 35% to Manitoba
- 5% to Alberta
- 5% to British Columbia
- 5% to Saskatchewan

These costs are to be paid pursuant to the public release of the Panel Report.

James D. Horsman, Chair

R. Lorne Seitz

Barbara McDougall

AIT Panel on Public Accounting

Ruling on Procedural Question by Manitoba

September 13, 2011

Background

On July 12, 2011, Manitoba, as Complaining Party, filed a request for a panel to be established pursuant to AIT Article 1703 (1) relating to Ontario's posting of a Notice of Measure to Achieve a Legitimate Objective under Chapter 7 of the AIT for the occupation of public accountant.

As Complaint Recipient, Ontario filed a notice of appearance; Alberta, British Columbia and Saskatchewan have filed notices of appearance as Intervenors.

In keeping with prescribed timelines, Manitoba filed its written submission on August 26, 2011. In para (10) of its submission, Manitoba argues that its initial submission cannot provide a comprehensive response to Ontario's justification given the general statements in the Ontario Notice of Measure.

Therefore in para (11) Manitoba has requested the Panel to allow it to file a further submission in response to Ontario's submission, with a timeline of 45 days from the date when Ontario files its submission, to address the justification that Ontario will be providing in its submission.

In its request, Manitoba cites Rule 29 of Annex 1705 (1) whereby the Panel may allow further written submissions and shall fix the time for their filing.

Ontario is required to file its written submission on October 11, 2011, 45 days following filing of the initial Manitoba written submission.

Conclusion

The Panel met to consider the Manitoba request on September 13, 2011. The Panel has agreed to permit Manitoba to file a supplementary written submission in response to Ontario's submission by October 25, 2011; the Panel also agrees to accord Ontario the opportunity to file a counter supplementary written submission by November 4, 2011.

The Panel counsels both Disputing Parties to confine their supplementary written submissions to the issue before the Panel, namely, justification of a legitimate objective under Chapter 7 by Ontario for the occupation of public accountant.

James D. Horsman, Chair on behalf of the Panel

AIT Panel on Public Accounting

Ruling on Procedural Question by British Columbia

October 17, 2011

Background

On July 12, 2011, Manitoba, as Complaining Party, filed a request to establish a panel pursuant to AIT Article 1703 (1) relating to Ontario's posting of a Notice of Measure to Achieve a Legitimate Objective under Chapter 7 of the AIT for the occupation of public accountant.

As Complaint Recipient, Ontario filed a notice of appearance; British Columbia filed notice of appearance as an Intervenor as did Alberta and Saskatchewan.

In its written submission on August 26, 2011, Manitoba requested the Panel to allow it to file a further submission within 45 days of the filing of the Ontario submission, to address the justification that Ontario will be providing in its submission.

In a ruling on September 13, 2011, the Panel agreed to permit Manitoba, as the Complaining Party, to file a supplementary written submission in response to Ontario's submission by October 25, 2011; the Panel also agreed to accord Ontario, as the Complaint Recipient, the opportunity to file a counter supplementary written submission by November 4, 2011.

All Intervenors filed their written counter submissions by the deadline of September 16, 2011; in its submission, similar to Manitoba's request, British Columbia seeks permission to file a supplementary submission within 45 days of the filing of the Ontario submission.

Ontario filed its written submission on October 11, 2011.

Conclusion

There is no precedent in past AIT cases for supplementary submissions by Intervenors. It is the Panel's view that a Party's status as Intervenor does not warrant comparable privileges as the Complaining Party, and that a Party understands this distinction in choosing not to join the dispute as a Complaining Party. Given that Ontario has filed there is ample time for all Participating Parties to prepare oral arguments for the hearing.

The request from British Columbia is denied.

James D. Horsman, Chair on behalf of the Panel

AIT Panel on Public Accounting

Ruling on Party Time Allocation at Hearing

October 31, 2011

Background

AIT Annex 1705(1) provides for rules of procedure regarding all panel proceedings, including hearings. Rules 32 to 38 relate especially to panel hearings. A specific protocol of order is laid out in Rule 35, whereby the Complaining Party presents its arguments, followed by any arguments by Intervenors, followed by the argument by the Complaint Recipient and lastly, a reply by the Complaining Party.

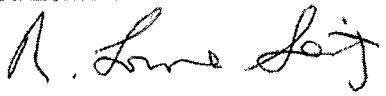
This protocol has been followed in past Panel cases save for a Summary Panel hearing held in July 2010 when the Complaint Recipient made the final argument based on a special provision in a Summary Panel Annex (1702.3) which applied to pre-existing Government-to-Government disputes.

Conclusion

The Panel will follow the order of presentation of arguments as set down in Rule 35 and accords the time allocation to Participating Parties as follows: Manitoba (120 min); British Columbia (15 min); Saskatchewan (15 min); Alberta (15 min); Ontario (165 min). The agenda for the Panel hearing is attached.

The Panel reminds the Complaining Party that, while entitled to present both opening and closing arguments, the Panel expects the Party to present substantive arguments in its opening presentation, and to limit its reply in closing.

R. Lorne Seitz on behalf of the Panel



AIT Panel on Public Accounting

Ruling on Public Release of Written Submissions

November 18, 2011

Background

Rule 22 of AIT Annex 1705(1) stipulates that the Panel shall make the Participants' written submissions available to the public no later than at the start of the public hearing, save for those parts of the written submissions that contain proprietary or confidential information. Under Rule 18 on confidentiality, such information is regarded *inter alia* as commercially sensitive or otherwise protected by law.

In advance of the pre-hearing release of their written submissions, Participants were requested to advise whether any parts of their written submissions contain proprietary or confidential information.

As Intervenors, British Columbia and Alberta advised there is no proprietary or confidential information in their written submissions. Saskatchewan did not respond so there is a presumption of no confidential information in its submission.

The Complaining Party, Manitoba, advised that CGA Canada, has asked that the Brondesbury Group Report and the Weinstein/Porter letters contained in the two Ontario submissions not be made public on grounds that these documents contain confidential proprietary information which is commercially sensitive.

The Complaint Recipient, Ontario, advised it does not consider its written submissions to contain any proprietary or confidential information which is commercially sensitive, or otherwise protected by law, and therefore agrees to the public release of both its written submissions in their entirety.

Conclusion

Given that disputing Parties make extensive use of these reports/letters in their written submissions, the Panel finds there is insufficient reason to consider any information to be of proprietary or confidential nature. Therefore, mindful of the overall interest to have an open and transparent hearing process, the Panel is not persuaded there is any compelling reason to not make public in their entirety all written submissions by Participants prior to the public hearing on November 29, 2011.

James D. Horsman, Panel Chair

Public Accounting Panel Hearing – List of Participants

Panel

James D. Horsman (Chair)
Lorne Seitz
Barbara McDougall

Manitoba

Spokespersons
Denis Guénette, Crown Counsel, Manitoba Justice
Devin Johnston, Crown Counsel, Manitoba Justice

Other Participants
Scott Smith, Special Advisor, Labour Mobility, Entrepreneurship, Training & Trade
Tami Reynolds, Senior Policy Analyst, Entrepreneurship, Training & Trade

Ontario

Spokespersons
M. Michele Smith, General Counsel, Crown Law Office – Civil, Ministry of the Attorney General
John D. Gregory, General Counsel, Justice Policy Development Branch, Ministry of the Attorney General
Dr. Edwin Weinstein, President, The Brondesbury Group
Mr. Gary Porter, FCGA, CA, The Brondesbury Group Evaluation Team

Other Participants
Jeremy Fortier, Senior Policy Advisor, Strategic Policy & Initiatives Branch, Ministry of Training, Colleges & Universities
Richard Caine, Manager, Trade & International Policy, Economic Development & Innovation

British Columbia

Spokesperson
Jeffrey Thomas, Borden Ladner Gervais, Counsel to the Government of British Columbia

Other Participants
Janna Jessee, Trade Policy Advisor, Jobs, Tourism and Innovation

Saskatchewan

Spokesperson
Katherine Roy, Crown Counsel, Ministry of Justice and Attorney General, Government of Saskatchewan

Other Participants
Nadette Schermann, Senior Trade Analyst, Trade Policy Branch, Intergovernmental Affairs – Executive

Mary Didowycz, Director, Policy & Intergovernmental, Advanced Education, Employment & Immigration

Alberta

Spokesperson
Shawna K. Vogel, Fraser Milner Casgrain, Counsel to the Government of Alberta

Other Participants
Shawn Robbins, Executive Director, Trade Policy – Domestic, International and Intergovernmental Relations
Gregory Sills, Trade Policy Officer
Kathleen Morrow, Senior Manager, Labour Force Development
Lindsay Hopper, Labour Mobility Manager

Internal Trade Secretariat

Anna Maria Magnifico, Executive Director
Bobbi-Jo Gauld, Internal Trade Officer

Tab 2

Report of the Article 1716 Panel Concerning the dispute Between the Certified General Accountants Association of New Brunswick and Quebec Regarding Quebec's Measures Governing the Practice of Public Accounting, August 19, 2005.

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

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ABBREVIATIONS

Agreement	*Agreement on Internal Trade*
CA	Chartered Accountant
CAA	Québec's *Chartered Accountants Act*
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 *Code*	Québec's *Professional Code*
The *Office*	*Office des professions du Québec*

1. INTRODUCTION

This is the report of a dispute resolution panel (the Panel) established under the *Agreement on Internal Trade* (the *Agreement*)[1] 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 in 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."

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[1] 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.

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 5th, 2005.

3. THE COMPLAINT[2]

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*)[3], 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).

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2 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).

3 *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*)[4] 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*)[5] and its regulations so that the *Office* can recognize the qualifications of CGAs from other jurisdictions, who are qualified to

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4 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.

5 *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[6]

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:

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6 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[7] in Québec in 1946;

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7 *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*[8] 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 Decembe16, 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

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8 *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[9]). 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[10], 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

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9 Transcript of the Panel hearing in Québec City on July 5, 2005.

10 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.

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.[11]

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."

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11 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.[12]

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.[13] 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:

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12 Article 24 of the *Chartered Accountants Act*

13 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[14]:

> "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.

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[14] 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[15] 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.

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15 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 Théroux, 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