

IN THE MATTER OF THE
AGREEMENT ON INTERNAL TRADE
and
IN THE MATTER OF A REQUEST UNDER THAT AGREEMENT
made by
THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF NEW BRUNSWICK
to commence dispute resolution proceedings vis-à-vis
QUÉBEC

Screener:
Roger Bilodeau

Date of Decision:
October 21, 2004

Introduction

1. The Certified General Accountants Association of New Brunswick (CGA-NB) has applied for permission to commence person-to-government dispute resolution proceedings against Québec, as provided by Article 1712(1)(a) (Initiation of Proceedings by Persons) of the Agreement on Internal Trade (AIT). In my capacity as New Brunswick's screener appointed to assess these types of complaints, I must decide if such permission should be granted.

The Issue

2. The issue in this matter can be summarized as follows :
 - a. Certified General Accountants (CGAs) who practise public accounting in New Brunswick are prevented from doing so in Québec because section 24 of Québec's Chartered Accountants Act and other legislative provisions allegedly restrict the practise of public accounting in Québec to Chartered Accountants (CAs);
 - b. As a result of these measures, CGA-NB states that its members are excluded from practicing public accounting in Québec, despite having qualifications and training in public accounting that are equivalent to those of CAs.

Relevant Provisions of the AIT and steps taken by CGA-NB to pursue this matter

3. Articles 1711(1) and (2) (Initiation of Proceedings by Government on Behalf of Persons) of the AIT require CGA-NB to request the Government of New Brunswick to initiate dispute resolution proceedings under Part A (Government-to-Government Dispute Resolution) of Chapter 17 before it can proceed under Part B (Person-to-Government Dispute Resolution). CGA-NB can only proceed with a person-to-government proceeding if the government of New Brunswick has declined to proceed under Part A.
4. Article 1711(3)(b) provides that CGA-NB must first request the Government of New Brunswick to initiate consultations with Québec to try to resolve the public accountant mobility issue under Article 711(Consultations). If New Brunswick declines to consult with Québec, CGA-NB would exhaust any "[...] applicable dispute avoidance and resolution process listed in Annex 1701.4 [...]".
5. Finally, Article 1712(1) (Initiation of Proceedings by Persons) provides that CGA-NB can commence a person-to-government dispute resolution proceeding if it receives notice under Article 1711(4) that the Government of New Brunswick will not initiate such proceedings on its behalf under Part A of Chapter 17 of the AIT.

6. In a letter dated March 23, 2004 addressed to New Brunswick's Labour Mobility Coordinator, CGA-NB did ask the Government of New Brunswick to consult with Québec as provided in Article 711 (Consultations) of the AIT to resolve the issue of public accountant mobility.
7. On May 13, 2004 New Brunswick's Deputy Minister of Training and Employment Development replied that the Government of New Brunswick would not initiate consultations because they would not be "expedient", based on Manitoba's prior experience in trying to resolve a similar public accountant mobility issue with Ontario.
8. On August 19, 2004, CGA-NB did also ask New Brunswick to initiate dispute resolution proceedings on its behalf under Part A of Chapter Seventeen of the AIT.
9. The Government of New Brunswick replied on September 1, 2004, stating that it would not proceed as requested under Part A of Chapter Seventeen of the AIT.
10. Article 1712(4) provides that a person cannot commence proceedings if the person has failed to:
 - a. request a Party to initiate dispute resolution proceeding under Article 1711(1);
 - b. [...] 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 (vis-à-vis the AIT) and knowledge that the person incurred loss or damage or suffered a denial of benefit.

11. CGA-NB became aware that Québec's measures were possibly inconsistent with the AIT when it received a copy of a letter dated September 16, 2002, sent by Québec's Labour Mobility Coordinator to his New Brunswick counterpart. That letter purported to explain why a CGA-NB member was not allowed to provide audit services to a client in Québec. CGA-NB thereafter obtained professional advice to the effect that Québec's laws were inconsistent with the mobility provisions of the AIT.

Role and Mandate of the Screener

12. The Screener's mandate is set forth in Article 1713(4) of the AIT. This Article provides that, in deciding whether or not a party such as CGA-NB should be allowed to proceed with a dispute resolution proceeding, the Screener must take into account whether the complaint is: (1) frivolous; (2) vexatious; or (3) intended merely to harass. The Screener is also asked to determine if there is a reasonable case of injury or denial of benefit.

13. With a view to providing further guidance to the Screener in regard to this mandate, New Brunswick recently issued Guidelines stating that:
- a. The Screener is not expected to comment on, or draw any conclusion concerning: (1) consistency of any measures with AIT; (2) the arguments involved in the dispute; (3) the extent of injury; or (4) the outcome of any further dispute process:[emphasis added];
 - b. The Screener is not expected to speculate on the outcome of any negotiations or processes that might have a bearing on the complaint or might ultimately assist in resolving the complaint ; and
 - c. The Screener should not offer recommendations or observations that are unrelated to the question of whether or not a request has sufficient merit to proceed.
14. These Guidelines therefore make it clear that the Screener is not required (or indeed permitted) to conduct an in-depth analysis of the merits of the case, nor to consider the likelihood of success of the case. Rather, the Screener is simply required to satisfy himself that the case is not devoid of merit.

A Precedent in the Matter

15. It is noteworthy and relevant to this matter that it is very similar to an AIT complaint launched in 2001 by CGAs from Manitoba, challenging Ontario's public accountant licensing regime. In that case, an AIT Panel found that Ontario's legislation constituted a barrier to mobility for CGA's from Manitoba who wanted to practise public accounting in Ontario. That barrier was found to be inconsistent with the mobility provisions of the AIT.
16. As noted above, CGAs from Manitoba successfully challenged Ontario legislation that prevented them from practicing public accounting in that province. In order to have that Complaint considered by the AIT Panel, it was necessary for CGA-Manitoba to obtain permission from the Manitoba Screener to initiate a person-to-government complaint, just as CGA-NB is attempting to do in this case.
17. The Hon. Alfred M. Monnin, Manitoba's Screener in that case, wrote that CGA-Manitoba's, "[...] issue is live and of importance to [Manitoba Certified General Accountants]". He therefore authorized CGA-Manitoba to proceed with a person-to-government dispute resolution proceeding. In his opinion, the issue was not frivolous, vexatious or intended to harass Ontario. Furthermore, he was satisfied that the complaint demonstrated a reasonable case of denial of benefits.

Analysis and Conclusions

18. In light of all the above and of the materials which were submitted to me by CGA-NB, I have concluded as follows:
- a. CGA-NB complied with Article 1712(4)(a) and (c) when, on March 23, 2004 and August 19, 2004 respectively, it communicated with the Government of New Brunswick requesting New Brunswick (i) to consult with Québec on this matter and (ii) to initiate dispute resolution proceedings, on its behalf;
 - b. CGA-NB has the necessary standing to initiate a person-to-government dispute resolution proceeding, as per the AIT;
 - c. CGA-NB has met the AIT criteria to be allowed to initiate dispute resolution proceedings vis-à-vis Québec, namely that its complaint is not frivolous or vexatious, nor is it intended to merely harass Québec;
 - d. there is a reasonable case of injury or denial of benefit to the members of CGA-NB as a result of the application of Québec's current public accounting licensing regime, and;
 - e. since this matter concerns access to the occupation of public accounting in Québec by members of CGA-NB, the appropriate AIT chapter under which this matter should proceed is Chapter Seven (Labour Mobility).

Decision

19. CGA-NB is granted permission to commence person-to-government dispute resolution proceedings against Québec, as provided by Article 1712(1)(a)(Initiation of Proceedings by Persons) of the AIT.

Roger Bilodeau, Q.C.
In my capacity as New Brunswick Screener

OTTAWA (Canada), October 21, 2004