

IN THE MATTER OF THE AGREEMENT ON INTERNAL TRADE

— AND —

C.E. NETWORKS INC.

— AND —

THE PROVINCE OF ALBERTA

— AND —

THE PROVINCE OF NEW BRUNSWICK

[1] C.E. Network Inc. is an Ontario company that has, over a number of years, set up and sold real estate education and instruction in various provinces in Canada, including Ontario, Alberta and New Brunswick. By virtue of the Agreement on Internal Trade to which all provinces, territories and the Dominion of Canada are signatories, general rules were enacted to ensure equal treatment by those parties of all Canadian persons, goods, services and investments. The parties were to refrain from creating obstacles to such treatment with limited exemptions set out in the Agreement. Where disagreements arise between the Parties, a dispute resolution system set up in the Agreement is to be followed. Where a person as set out in Article 1710 has cause to believe that another province, territory or the federal government is not acting within the scope of the Agreement, that person may request a Party “with which the person has a substantial connection” to initiate the dispute resolution process.

[2] In this case, C.E. Network Inc. has asked the Province of Ontario to begin these proceedings. The request appears to have been commenced by a letter dated June 12, 2009 by Mr. Collum James, Senior Vice President of C.E. Network Inc. to the Minister of Economic Development and Trade for Ontario. Pursuant to the practice the matter was referred to the Ontario Ministry of Consumer Services. On July 13, 2009 Angela Longo, Deputy Minister of Consumer Services, advised Mr. James that that ministry would not initiate proceedings.

[3] Mr. James on behalf of C.E. Networks & Inc. then took the next step in the dispute process, requesting as of September 21, 2009 that the process set out in Article 1711 of the Agreement be set in motion. This process permits the person to initiate the dispute resolu-

tion process but that process must be first determined to be appropriate by an independent screener – “independent of government and capable of making an independent decision on the merits of the request”.

[4] Ontario has set up a process to cover this eventuality by virtue of a protocol made between the Province of Ontario and the Chief Justice of the Ontario Court of Justice. The protocol provides that where such an issue arises the Ministry of Economic Development, Trade and Tourism shall contact the Chief Judge. The Chief Judge will arrange for a *per diem* judge available to perform the function of screener and make a ruling within 30 days of the request. This process was followed and the Ministry forwarded all materials¹ to Mr. Justice Anton Zuraw, the agreed upon Screener, by email on Friday, October 9, 2009. The screener was advised that a decision in writing was required within 30 days of the initial request of September 21, 2009.

[5] Upon review of the materials filed, the Screener advised the Parties that any written submissions could be filed with the screener but, bearing in mind the time constraints, had to be forwarded by October 14, 2009. A request was received for more time from the Parties and agreed to by the Screener. The last submissions were made at the close of October 16, 2009.

The Complaint Against Alberta

[6] The Screener is obliged to determine that the person filing the written request has provided sufficient information that, among other things, there is a measure taken by the Province of Alberta which could be the subject matter of a dispute under the Agreement.

[7] It is clear in the material filed that the objections made are not to decisions made by the Province of Alberta, but rather those of an independent agency set up by the Province to develop pre and post licensing education courses as part of professional development for real estate professionals in Alberta. This agency, the Real Estate Council of Alberta (RECA), is

¹ Lengthy submissions from requesting party, C.E. Networks Inc., relevant articles from the Agreement, the Ontario Protocol for Screeners, the Screener Guidelines pursuant to the Agreement, correspondence to and from C.E. Networks, various provincial (Ontario, Alberta, New Brunswick) submitted as part of the process.

an independent board, established under law, not for profit, and not a Party to the Agreement.

This Agency has been in existence since 1996 with its powers and duties set out. That Agency made certain changes sometime in 2006 which are the delict for the complaint by C.E. Network.

[8] A careful review of the complaint and the Agreement does not indicate that Alberta is in derogation of its duties under Agreement. I am not satisfied to the extent necessary that the Agreement covers the actions of RECA, nor that the request was made within two years of when the person should have acquired knowledge of any trade infraction or loss or damage as envisaged in the Agreement.

[9] Having made these rulings there is no need to proceed further with respect to Alberta. I do find the request to be frivolous and vexatious. The C.E. Network request to commence dispute resolution proceedings is denied.

New Brunswick

[10] Similar to Alberta, New Brunswick has privatized the right to regulate the real estate industry including the right to licence and to provide accredited real estate education. The New Brunswick Real Estate Association has the same position then as does the Real Estate Council of Alberta and it would appear has been so authorized for some years. Indeed, the complaint in respect of New Brunswick refers to several years of attempts to deal with this monopoly. It further sets out that in 2007 there was a mandatory two day education course in New Brunswick.

[11] From the complaint itself, it would appear that the privatization was more than two years prior to the complaint, although the more recent decisions of the non-governmental agency are what has triggered this complaint.

[12] As I find that New Brunswick has the right to delegate such authority to an independent non-governmental body, thus taking it out of the dispute resolution process, I find that this complaint too cannot give rise to access to the dispute resolution process as requested.

Conclusion

[13] I find that the Provinces of Alberta and New Brunswick have the right to privatize government services, assets or enterprises. Once done, those services, assets or enterprises are no longer covered by the general rules in Article 401 of the Agreement on Internal Trade.

[14] Further, pursuant to Article 500(1), Chapter 5 cannot be involved on these facts and s. 611(1) causes the same conclusion to be reached with respect to Chapter 6. Lastly, Chapter 7, (labour mobility) does not apply due to the provisions of 702 and 713(1) which provisions do not include corporations such as the complainant here, C.E. Networks.

[15] Accordingly, C.E. Networks Inc. is denied permission to commence person to government dispute resolution proceedings against the Province of Alberta and the Province of New Brunswick.

Released: October 19, 2009



Signed: "Justice A. Zuraw"

"Screener"