

LABOUR MOBILITY Q & A

Labour Mobility Act

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Background: Agreement on Internal Trade

1. What is the Agreement on Internal Trade (AIT)?

- The Agreement on Internal Trade (AIT) is a trade agreement based on the federal and provincial governments' intention to promote an open, efficient and stable domestic market for long-term job creation, economic growth and stability. This is to be done through the elimination of barriers to the free movement of persons, goods, services and investments within Canada, promotion of equal economic opportunity for Canadians, and the enhancement of competitiveness of business.
- The AIT was signed by all provinces, territories and the federal government in 1994. Its objective is to reduce and eliminate, to the extent possible, barriers to the movement of persons, goods, services and investments within Canada. The AIT focuses on 11 specific sectors, one of which is labour mobility (Chapter Seven).

2. When does the AIT come into force?

- The AIT has been in force since 1995, but the recent amendments to the labour mobility provisions, that were agreed to by the First Ministers in January, 2009. These amendments have now been ratified by all provinces and territories and are in effect.

3. What is the scope of the AIT?

- Labour mobility is only one aspect of the AIT. The AIT is comprehensive and contains chapters on procurement, investment, labour mobility, consumer-related measures and standards, agricultural and food goods, alcoholic beverages, natural resources processing,

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communications, transportation, and environmental protection. In future, provisions relating to energy may be negotiated.

4. What does Chapter Seven – Labour Mobility do?

- The initiative has been mandated by Premiers as a right of all Canadians to live and work where they want to in Canada.
- The purpose of Chapter Seven is to eliminate or reduce labour mobility barriers created as a result of residency requirements for workers as a condition of access to employment opportunities or as a condition of certification, and certification requirements, such as material additional training, experience or assessment requirements.
- The purpose of Chapter 7 is to ensure that any worker certified to perform a profession or occupation by a regulator in any Canadian province or territory will be granted a certification in respect of the same profession or occupation in any other province or territory, without the need for additional training, work experience, or examinations.

5. Who is covered under AIT's labour mobility provisions? Are there any occupations or professions that are not covered?

- The labour mobility provisions of the AIT apply only to those occupations for which provincial certification is available or required, based on an assessment that certifies the worker as qualified to provincial standards. About 15% of workers in Canada work in occupations where a license or certificate is available or required to work.
- The AIT does not cover occupations for which there is no certification or licensing requirements. For example, retail and service employees, restaurant servers, administrative and clerical workers, and many other workers who do not require a license or occupational certification to perform their occupation within a province are not covered by the AIT.
- Not all provinces regulate occupations similarly. For example, medical laboratory technicians are not provincially certified in BC, although they are in some provinces.
- As well, occupations specific to the financial sector, such as mortgage brokers and financial advisors, are not now covered by Chapter Seven.
- It is important to note that educational qualifications to perform an occupation (such as a degree or certificate awarded by a post-secondary institution) differ from occupational certification and licensing requirements imposed by a professional or occupational association that regulates practice of the profession or occupation in the province.

6. The AIT has existed since 1994 – What has changed recently and how will those changes make any difference to workers?

- Recognizing the success of the labour mobility approach within TILMA, the Council of the Federation agreed to amend and strengthen the labour mobility provisions in Chapter Seven

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of the AIT by January 1, 2009. Amendments were finalized in December, 2008, and signed by the First Ministers on January 19, 2009.

- Changes to Chapter Seven:
 - require elimination of local residency requirements.
 - mandate certification of workers based on previous certification in another Canadian jurisdiction.
 - mandate that certification practices for workers from other jurisdictions must be transparent, objective, and impartial.
 - Require regulators to provide publicly accessible certification information to applicants from other jurisdictions.
- Dispute resolution processes within the AIT have been strengthened so that there are real penalties for non-compliance.
- It is expected that with these changes, workers will see the objects of the AIT fulfilled, and experience real ability to move to where the work opportunities may be.

7. What sorts of consultations were done by Jurisdictions that signed AIT?

- Canadian jurisdictions have worked together for years on issues relating to labour mobility, and consulted widely with professional and occupational associations. Provinces and territories developed and distributed a common communication package in Spring 2008 to advise provincial and territorial stakeholders of planned changes and implications for regulatory authorities.

8. What is the difference between the AIT and TILMA?

- The AIT is a trade agreement encompassing several different aspects of trade between the federal government, the governments of ten provinces and the governments of the Yukon and Northwest Territories. The Trade, Investment and Labour Mobility Agreement (TILMA) is an agreement addressing trade, investment and labour mobility, to which only Alberta and British Columbia are parties.
- Both the AIT and TILMA contain provisions on labour mobility. The AIT's new labour mobility provisions largely duplicate the labour mobility provisions of TILMA that already apply in respect of Alberta and British Columbia, effectively extending full labour mobility to the other provinces and two territories of Canada.

Background: Labour Mobility Act

9. What is the difference between the Agreement on Internal Trade and the Labour Mobility Act?

- The AIT is an agreement that includes the federal government and the governments of the Canadian provinces and territories.

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- The AIT contains commitments on a number of matters relating to internal trade, one of which is labour mobility. The Province is liable to penalties for failure to comply with the terms of the AIT.
- The *Labour Mobility Act* will be applicable within British Columbia imposing a legal requirement on BC regulators that have delegated authority to certify workers in regulated occupations within the Province to operate in a manner consistent with the Province's obligations relating to labour mobility under the AIT.

10. Why is government introducing labour mobility legislation at this time?

- British Columbia has long been a champion of full labour mobility, recognizing the importance of full labour mobility to B.C.'s economy.
- With the recent ratification by all provinces of the terms of Chapter 7, this legislation ensures that barriers to mobility are eliminated.
- Many respected forecasters, including the Conference Board of Canada are predicting a return to strong growth for B.C.'s economy by 2010. This legislation will ensure B.C. is well positioned to meet the demand for skilled labour a robust economy provides.

11. Why is legislation necessary? Doesn't the Agreement on Internal Trade itself grant labour mobility rights?

- While the AIT is an agreement between governments, the *Labour Mobility Act* imposes the obligation on regulators within the Province to operate in a manner consistent with the Province's obligations relating to labour mobility under the AIT.
- Without the legislation, the Province would be less able to hold regulators to account for labour mobility. As self-governing entities, it is the regulators who have the power to make decisions regarding certification, and not the Province.

12. What is the state of labour mobility legislation in other provinces? Is B.C. lagging?

- No, in fact British Columbia's work on the TILMA agreement with Alberta has helped to prepare our province for the new national labour mobility agreement.
- Changes to national labour mobility through the Agreement on Internal Trade affect a broad range of trades and professions that are recognized in various Acts and regulations. Each of these has been reviewed for potential changes necessary to ensure they do not conflict with the national agreement.

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Economic Impacts

13. What will be the economic impacts of permitting full labour mobility?

- It is difficult to determine precise economic impacts but openness and flexibility suggest that provinces that are most open will be able to be competitive.

14. How will the wages and salaries of professionals and skilled tradespeople be affected?

- These changes will guarantee mobility in terms of recognition of certification. They do not guarantee anyone a job in any province, or any increase in wages or salaries. People who want to move to another province will compete for jobs and local wages and salaries as they always have.

15. Why do we need to open the doors to in-migration from other provinces? Don't we have enough skilled trades and professionals right here?

- The average age of British Columbians is now over 40. Over the next ten years, many of our professionals and skilled trades people will begin retiring, creating many openings across all fields of work.
- While our post secondary education and training system is preparing a new generation of British Columbians for the workforce, the number of forecast retirements exceeds the number of students by a significant margin.
- Interprovincial migration is one of the best ways in which our province will be able to meet the labour market needs of the future.

Role of Professional and Occupational Associations

16. What will be the role of associations or oversight bodies for professionals like doctors, lawyers, and engineers?

- Provincial regulators remain responsible for maintaining and monitoring the certification requirements that are in place in the professional legislation, governing admission to the professions, and ensuring occupational standards are maintained at high levels. They will continue to be responsible for maintaining codes of ethics and administering discipline as delegated to them by government in their governing legislation.
- Regulators are required to:
 - implement and follow certification practices for workers from other provinces that are transparent, objective, impartial and fair;
 - actively eliminate existing barriers to labour mobility for workers from other provinces and territories and refrain from creating new barriers;

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- provide publicly accessible certification information to applicants that is clear, understandable, and provided in a timely manner.
- Regulators cannot:
 - Require additional material testing, work experience, or assessments for workers who are certified for the same occupation in another province or territory.
 - Require local residency as a condition of applying for, or maintaining certification in BC.
- Communications between professional associations in each province will help to reconcile any remaining barriers to full mobility, and as standards evolve over time, and to ensure no new labour mobility barriers are created.

17. What if occupational associations want to protect their current members' interests and decide to increase standards?

- The Act prohibits BC regulators from proposing or applying measures such as residency requirements as conditions of access to employment opportunities or for certification or certification requirements for additional material training, experience, examinations or assessments – that are not supported under Chapter Seven of the AIT.
- Exceptions must be approved by both the Minister of Advanced Education and Labour Market Development and the Minister responsible for the legislation of the regulator concerned. Such measures must be provincially approved and publicly posted.

Impacts on Certified Tradespersons

18. How will this agreement and legislation affect certified tradespersons?

- A large number of skilled tradespersons practicing in Canada are already certified through a national standard known as “Red Seal.” This standard supports skilled workers, enabling them to practice their trade wherever there is demand for their skills.
- Red Seal certified workers will be automatically recognized as qualified in BC with their current certification, wherever it was obtained in Canada; they will not be required to re-apply to the Industry Training Authority for a BC Certificate.
- Other trades workers will be recognized as well, unless there are demonstrated risks to doing so.

Ensuring Workers are Qualified

19. How will the province ensure only qualified tradespersons and professionals are able to practice in B.C.?

- Each province and territory has the right to set its own standards for the occupation in question, and that will not be compromised by this new legislation.

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- The standards for regulated occupations in Canada generally have a high degree of commonality. Where they do not, according to the provisions of the AIT, a province can ask for an "exception" to labour mobility, provided that it can demonstrate that there is a critical difference in certification requirements that poses a risk to the public, to the consumer, or in terms of other "legitimate objectives" of government such as consumer or environmental protection.
- Provincial regulators will remain responsible for maintaining and monitoring the certification requirements that are in place through provincial legislation.
- If a province or territory does not believe that the workers of another province or territory are competent to work in their jurisdiction, the government of that jurisdiction can declare an exception by posting that exception to a public website. Any exceptions are open to challenge by the other provinces and territories.

Practical Impacts for Workers

20. Can BC regulators require that persons reside in BC to apply for membership?

- While to date, some BC regulators have maintained requirements that applicants be resident in BC, or maintain residency in BC, as a condition of certification, this will no longer be permitted.
- Workers residing anywhere in Canada will be eligible to apply for certification in respect of their occupation in BC, prior to moving to British Columbia.
- It is not necessary that they reside in BC permanently, and so workers may move between provinces and territories as they wish to take advantage of work opportunities.

21. What does a previously certified worker need to provide when approaching a BC regulatory authority for certification?

- The worker needs to provide proof of their certification in another province – their certificate, licence, registration or other form of official recognition issued by the occupational association that shows he or she is qualified to practise the occupation or use a title.
- He or she may also need to pay application fees, to obtain insurance as may be appropriate, to provide evidence of good character, and to offer evidence that his or her certification from another jurisdiction is in good standing.

22. Will the application process be simplified in any way?

- In respect of most professions and non-trade occupations, a worker need only provide proof of his or her certification and apply to the professional or occupational association using a simpler form of application that would be used by a new applicant.

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- Given Chapter Seven, regulators cannot request more than the information than is necessary to meet their obligations in the Chapter as well as in respect of any applicable social policy measures or other approved measures.
- 23. Will workers holding certifications from other provinces have to write any additional examinations, undertake additional training, or fulfil other requirements prior to becoming certified in BC?**
- Workers will not have to write material additional examinations or undertake additional training if they hold certifications from other Canadian provinces or territories. “Material” in this context means substantive. There will still be non-material processes to ensure a worker has knowledge of provincial laws and regulations, as permitted under Chapter 7 of the AIT.
 - Workers may also have to pay application fees, obtain insurance as may be appropriate, provide evidence of good character, and offer evidence that their certifications from another jurisdiction are in good standing, as these are specified to be acceptable requirements under the AIT.
- 24. What kinds of requirements can a BC regulator impose on a worker from another jurisdiction who wants to move here?**
- In accordance with Chapter Seven, it is permissible for regulators to require a worker who applies for certification to pay application fees, to obtain insurance as may be appropriate, to provide evidence of good character, and to offer evidence that his or her certification from another jurisdiction is in good standing. They may require them to demonstrate English language proficiency if, and only if, this has not been previously assessed as part of licensure in another jurisdiction.
- 25. Will applicants from out of province be treated any differently than BC residents who are certified to perform the occupation in BC?**
- Yes, in that certification for these workers will be simpler. They do not have to demonstrate competence as this has been previously assessed. However, previously certified workers who apply and are granted certification in this way will be permitted to use, within BC, the occupational title (e.g. Professional Engineer), designation, or related abbreviated title or designation (e.g. P.Eng.) that accompanies certification for that profession or occupation in BC.
 - Once certified, these workers will have the same rights, and are subject to the same restrictions and obligations, as members of that profession or occupation who were certified under the initial qualification or admission process in BC. After certification, there will be no apparent distinction between workers qualifying under either stream.
- 26. Will there be any registration costs for a trade or professional worker moving to B.C.?**

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- There may be costs in terms of application fees to cover administration of the certification process. Processes should be faster and there may be some reduction in costs related to reassessment of competency, which will no longer be allowed.
- The Industry Training Authority will recognize provincial certificates for the trades it regulates via its website. For workers in these trades, no additional certification is required by the ITA, and so there will not be any associated cost.

27. Will skilled workers moving from province to province incur any new costs or see any fees eliminated as a result of the AIT?

- Application processes should be faster and there may be some reduction in costs related to reassessment, and the cost of wait time for certification, prior to employment.
- The application forms should be more streamlined than those for workers applying to be certified in the occupation for the first time, since it will not be necessary to obtain information intended to prove competency in the profession or occupation.

28. What about titles? Can a worker use the same title they used in the other province?

- Many occupational titles are consistently used across the country, but there are some occupations for which the titles associated with the occupation are different. When that is the case, upon certification in BC, workers will be required to use the associated title for the occupation that is reserved in BC. This will reduce the likelihood for confusion by members of the public.

29. Will full labour mobility affect wages in regulated trades and professions?

- A certified worker coming to BC from another Canadian jurisdiction will be certified to perform the occupation or profession in BC. Neither Chapter 7 of the AIT or the B.C. Labour Mobility Act provide any guarantee of employment or wages.

Comparing Occupations across Jurisdictions

30. What happens if the occupation performed by a worker in another province is not exactly the same as that in BC – will there be full, unrestricted ability for that worker to come to BC?

- There will be full mobility for occupations that are the same or substantially similar. In a very few cases where the work is similar enough that it is still the same occupation, but there is some additional aspect that is part of the occupation that workers from other provinces are not competent to perform, there will be material additional training or requirements prescribed to be completed within a certain period of time after the worker obtains certification in BC. These additional requirements must be linked to a significant risk such as public health or safety, or consumer protection.

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- Also, these additional material requirements must be provincially approved and publicly posted as an identified “exception” to full labour mobility. The only exception currently identified by BC is for Quebec lawyers, trained in the Quebec Civil Code system of law, rather than the common law system that exists elsewhere in Canada. Quebec lawyers will have to undergo additional requirements for certification in other Canadian provinces.
 - It is not yet known what exceptions other provinces will identify. The Forum of Labour Market Ministers (FLMM) will provide a report to Canadian Premiers in August, 2009 on the implementation of Chapter Seven. The revised Chapter Seven also provides for annual reporting by the FLMM.
- 31. What if a worker is not regulated in the practice of their occupation in their home province but he or she wants to move to BC and work in that occupation which is regulated here?**
- In those circumstances, the worker would be required to meet the certification requirements set out by the BC regulator for that occupation, just as any BC resident would in order to begin practising the occupation in BC.
- 32. What if a worker is regulated in the practice of his or her occupation in another province but there is no regulation of that occupation in BC?**
- A worker who holds a certification from another jurisdiction may freely practice his or her occupation in BC when that occupation is not one that is regulated in BC, as long as the occupation does not infringe on “restricted activities” of another occupation. For example, some provinces certify paralegals to practice independently. In BC, we do not certify this occupation. Paralegals moving to BC will have to work under a lawyer’s supervision and cannot set up independent practice as a paralegal, as that work is restricted to lawyers here.
- 33. Will workers be able to upgrade to higher level occupations when they come to BC? What if the standards elsewhere are lower than those we have here?**
- Equivalence or substantial equivalence between the occupations is necessary for unconditional labour mobility to BC to be permitted.
 - If a worker wishes to upgrade to a different occupation – such as a specialist category of an occupation -- when moving to BC, there would very likely be need for additional training, examinations, or work experience to be undertaken as part of that. The requirements for the certification for the new occupation would be determined by the BC regulator for that occupation. Individual assessment would be used to identify additional requirements for that worker.

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Safeguards

- 34. What if a worker from another province has been disciplined by their regulator for unprofessional conduct – can they just come to British Columbia and start over with no questions asked?**
- No, when they apply for membership in the BC occupational association, workers can be required by the regulator to provide evidence of good standing and good character, and so their record can be requested from the association that granted their previous certification. A regulator has the discretion not to grant certification in instances where the applicant's record is such that that person is deemed to create a significant risk to the province if certified here.
- 35. What if a worker from another province has been granted a licence to practice that is conditional or restricted in some way? Will they be able to do more in British Columbia than they did in their home province?**
- No, there is no entitlement created for anyone to upgrade their certifications merely by moving to another jurisdiction. One can obtain the equivalent certification in BC from the applicable BC regulator, where such exists, but if no such equivalent certification exists, BC is not required to create that category of licence. Therefore, an applicant with a limited licence may receive a BC licence or may be refused a licence in BC at the discretion of the regulatory authority.

Mobility for BC residents

- 36. Will B.C. professional and trades certifications be accepted in all other provinces and territories?**
- Yes. Full labour mobility means that B.C. professionals and tradespersons may work in any Canadian jurisdiction, with the exception of the legal profession moving into, and out of Quebec, where a different form of law is practiced.

Dispute Resolution

- 37. Are there any provisions in the AIT to resolve disputes over labour mobility issues?**
- Yes, there is a dispute resolution process under the Agreement on Internal Trade. If a dispute cannot be resolved by the Parties to the Agreement (the Provinces), it will go to an independent panel, which is how trade law disputes are typically managed.
 - The decisions of the panel are binding and, if the Parties do not follow up to correct a problem following a panel decision, there are financial consequences, including penalties of up to \$5 million.

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- If this process were utilized by another jurisdiction stating that BC, or one of its regulators, is not in compliance with the terms of the AIT, it is possible that the Province could be liable to pay penalties.
- 38. Does the Labour Mobility Act contain anything different in terms of resolving disputes over labour mobility issues?**
- The Act sets out a mechanism for a worker from another jurisdiction to challenge the decisions of a BC regulator not to grant a requested certification, or to grant the certification on terms, conditions, or requirements.
 - Compared to the AIT dispute resolution process, the Act provides a more practical means for individuals seeking redress. Workers would proceed to exercise all rights for review by the regulator and then, if not satisfied upon conclusion of those processes, may refer the question of whether the regulator's decision was in accordance with the AIT to the Supreme Court of BC. If the Supreme Court were to find that the regulator did not apply Chapter Seven, the application is to be referred back to the regulator with directions on how to comply with Chapter Seven.

Foreign-Trained Workers

- 39. Will immigrants from outside of Canada become entitled to practice their trade or profession under this new legislation?**
- The Act does not grant any labour mobility rights to anyone who does not already possess a professional or occupational certification from a Canadian regulator. It will not apply to workers who are not already resident and working within Canada.
 - As in the past, immigrants may apply to have their foreign credentials recognized by provincial regulators. These applicants are treated similarly to new applicants within a province insofar as the foreign credentials are subject to scrutiny according to certification criteria set out in the applicable legislation, regulations or bylaws.
 - However, once a person having foreign credentials is resident in a Canadian province or territory and has received provincial certification in respect of their occupation, they may – subject to the provisions within the Agreement on Internal Trade (AIT) and the Act – apply to the regulator of any other Canadian jurisdiction for certification, regardless of where they originally undertook their training.

Exceptions

- 40. Are there any trades or professions where full labour mobility may be difficult to implement?**
- The legal profession has been identified as a profession that will not be able to enjoy full labour mobility. All provinces, including BC, intend to identify an additional requirement

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for examinations applicable to lawyers from Quebec, who are trained and certified in the civil law system, which differs significantly from the rest of Canada.

- Otherwise, lawyers will be able to move between the other Canadian provinces on the same terms as all other professions and occupations to which the AIT applies.
- The Law Societies across Canada have been leaders in labour mobility and will continue their work in this area.
- At this time, BC is also posting a time-limited exception for Nurse Practitioners. This one-year exception is intended to allow time to further align BC standards with those of all other jurisdictions in Canada.
- Additionally, the legislation provides a mechanism should other exceptions be identified in the future. Approval of the Minister responsible for labour market development and the Minister responsible for the legislation under which the occupation is regulated is required.

Validators and Stakeholders who are Opposed

41. Which group or groups have been responsible for leading this change?

- The Committee on Internal Trade (CIT) and the Forum of Labour Market Ministers (FLMM) have led the discussions leading to agreement by the First Ministers to implement full labour mobility across all Canadian jurisdictions.
- Canada's Labour Market Ministers are responsible for monitoring compliance with the new labour mobility chapter of the AIT.

42. Are there any professional or occupational associations that have validated the principles of full labour mobility?

- Many provincial regulators and professional associations have indicated they strongly support labour mobility principles – among them are the Certified General Accountants of British Columbia (CGABC), Architectural Institute of BC (AIBC), and the Association of Professional Engineers and Geoscientists of the Province of British Columbia (APEGBC).

43. Are there any professional or occupational associations that have expressed concerns about the principles of full labour mobility?

- The College of Registered Nurses of British Columbia and the Federation of Law Societies of Canada (one member of which is the Law Society of British Columbia), while not dismissing the object of full labour mobility outright, have expressed some reservations about certain aspects surrounding its implementation.
- It is not anticipated that these concerns cannot be satisfactorily addressed through continued work among provincial and territorial professional and occupational associations.