

**AGREEMENT ON INTERNAL TRADE  
ACCORD SUR LE COMMERCE INTÉRIEUR**

**TOWER CRANE OPERATOR  
PERSON TO PROVINCE DISPUTE**

**SUBMISSIONS  
OF THE PROVINCE OF ONTARIO**

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**AIT TOWER CRANE OPERATOR  
PERSON TO PROVINCE DISPUTE**

**SUBMISSIONS OF THE PROVINCE OF ONTARIO**

**PART I – THE NATURE OF THE DISPUTE:**

1. The Applicant in this dispute holds a “Crane Operator” (*Grutier*) certificate issued by the regulatory authority for the crane operator occupation in Quebec. He submits that Ontario is required, under the terms of Chapter 7 of the Agreement on Internal Trade (the “AIT”), to ensure that he is certified in Ontario as a Branch 3 Hoisting Engineer (Tower Crane Operator).
2. Ontario submits that there is no equivalent or corresponding occupation of “Crane Operator” in Ontario for which the Applicant could be issued a certificate; nor is there any provision in Chapter 7 which requires it to issue a certificate for an occupation in Quebec where there is no equivalent or matching occupation that is certified in Ontario.
3. Ontario submits that the Applicant’s complaint should therefore be dismissed.

**PART II - BACKGROUND FACTS:**

**A. Hoisting Engineers – Ontario**

4. Subject to certain exemptions that do not apply to this dispute, no one in Ontario may practice a trade subject to the *Trades Qualification and Apprenticeship Act (TQAA)* unless he or she holds a certificate of qualification issued by the regulatory authority under the *TQAA* (or is an apprentice who has registered a contract of apprenticeship with the regulatory authority).<sup>1</sup>

*Trades Qualification and Apprenticeship Act, R.S.O. 1990, c. T.17, ss. 10(2); Book of Legislative Provisions, Tab 7*

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<sup>1</sup> Both the *TQAA* and the *Apprenticeship and Certification Act, 1998*, which governs other specified trades, are to be repealed on the date that the *Ontario College of Trades and Apprenticeship Act, 2009*, S.O. 2009, c. 22 (*OCTAA*) is proclaimed to be fully in force by the Lieutenant Governor in Council. (See Book of Legislative Provisions, Tab 9)

5. The Lieutenant Governor in Council may designate any trade as a certified trade for the purposes of the *TQAA*, and may provide for separate branches or classifications within the trade.

*Trades Qualification and Apprenticeship Act, R.S.O. 1990, c. T.17, ss. 10(1); Book of Legislative Provisions, Tab 7*

6. The trade of “hoisting engineer” is designated as a certified trade for the purposes of the *TQAA*.

*Hoisting Engineer Regulation made under the TQAA; R.R.O. 1990, Regulation 1060, s. 2; Book of Legislative Provisions, Tab 11*

7. Specific certification requirements for hoisting engineers are set out in Regulation 1060 made under the *TQAA*. The Regulation establishes three branches of hoisting engineers:

1. **Branch 1, mobile crane operators** who maintain and operate mobile cranes that are capable of raising, lowering or moving any material that weighs more than 16,000 pounds.
2. **Branch 2, mobile crane operators** who maintain and operate mobile cranes that are capable of raising, lowering or moving only material that weighs more than 16,000 pounds but no more than 30,000 pounds.
3. **Branch 3, tower crane operators** who maintain and operate tower cranes.<sup>2</sup>

*Hoisting Engineer Regulation made under the TQAA; R.R.O. 1990, Regulation 1060, s. 3; Book of Legislative Provisions, Tab 11*

8. A specific and unique certificate is issued for each of Branch 1, 2 and 3 of the trade of hoisting engineer, and each Branch is subject to a distinct training requirement.

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<sup>2</sup> Once the *OCTAA* is proclaimed fully in force, the Ontario College of Trades will become the regulatory authority for Ontario trades. As part of the implementation of the new college, certain regulations under the *OCTAA* have already been made. These include Ontario Regulation 175/11 which prescribes the trades that will be governed by the college (see Book of Legislative Provisions, Tab 13). Subsection 2(1) of this regulation prescribes the construction trades. Consistent with the three hoisting engineer branches under the *TQAA*, the new regulation prescribes three distinct trades of:

Hoisting Engineer — Mobile Crane Operator 1  
 Hoisting Engineer — Mobile Crane Operator 2  
 Hoisting Engineer — Tower Crane Operator

***Hoisting Engineer Regulation made under the TQAA; R.R.O. 1990, Regulation 1060, s. 5; Book of Legislative Provisions, Tab 11***

9. More specifically, with regard to the certificate for Branch 3 Hoisting Engineer (Tower Crane Operator), the apprentice training program shall consist of two periods each consisting of 1,500 hours of apprentice training.

***Hoisting Engineer Regulation made under the TQAA; R.R.O. 1990, Regulation 1060, ss. 5(3) ; Book of Legislative Provisions, Tab 11***

10. The regulatory authority responsible for issuing certificates of qualification under both the *TQAA* and the *Apprenticeship and Certification Act, 1998 (ACA)* is the Director of Apprenticeship, an official appointed to the position under Part III of the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35.

***Apprenticeship and Certification Act, 1998, S.O. 1998, c. 22, ss. 4(1) ; Book of Legislative Provisions, Tab 8***

11. The *TQAA* and Regulation 1055 made under the *TQAA* set out the general criteria governing certificates of apprenticeship and certificates of qualification in a trade. It provides that if an apprentice has completed an apprenticeship program and passed such final examinations as prescribed by the Director, the Director shall issue the individual a certificate of apprenticeship. If the holder of a certificate of apprenticeship then pays the prescribed fee, the Director may issue a certificate of qualification without examination.

***Trades Qualification and Apprenticeship Act, R.S.O. 1990, c. T.17, ss. 16 and 17; Book of Legislative Provisions, Tab 7***

***General Regulation made under the TQAA; R.R.O. 1990, Regulation 1055, ss. 14(1) and 16(1); Book of Legislative Provisions, Tab 12***

12. Regulation 1055 also provides that subsection 10(2) of the *TQAA* (the requirement to hold a certificate of qualification to practice a trade in Ontario) does not apply to persons who hold a valid equivalent certificate of qualification issued by the Province of Quebec in six listed trades, including that of Hoisting Engineer.

***General Regulation made under the TQAA; R.R.O. 1990, Regulation 1055, ss. 5(1)(b); Book of Legislative Provisions, Tab 12***

## B. Crane Operators – Quebec

13. Subject to certain exemptions that are not relevant for the purpose of this dispute, construction trade workers in Quebec must hold a competency certificate issued by the Commission de la construction du Québec (the Quebec Construction Commission), the Quebec regulatory authority for the construction trades.

*Act respecting labour relations, vocational training and workforce management in the construction industry, R.S.Q., c. R-20, s. 85.6; Book of Legislative Provisions, Tab 14*

14. Individuals who may be issued a certificate by the Commission include crane operators, who are identified as anyone who:

- (a) operates all types of cranes such as elevator cranes, tower cranes, suspended cranes, derrick cranes, self-propelled cranes on locomotives or truck-mounted on wheels or tracks, with hydraulic, electric, mechanical and electro-mechanical attachments;
- (b) operates travelling cranes, boring machines, piledrivers and cranes equipped with piledriving equipment used to drive cement, tubular or other piles or sheetpiles.

A crane operator also operates the above equipment when it is electrically-driven.

The certificate for these workers is the Crane Operator certificate.

*Regulation respecting the vocational training of the workforce in the construction industry, c. R-20, r. 8, Sch. A, Group II, s. 3; Book of Legislative Provisions, Tab 15*

15. An applicant for a Crane Operator certificate in Quebec may complete a vocational studies diploma in crane operations, totalling 870 hours of instruction and obtain an employment guarantee of at least 150 hours from an employer, and is then issued an apprentice competency certificate.<sup>3</sup>

*Regulation respecting the issuance of competency certificates, c. R-20, r. 5, s. 2.1; Book of Legislative Provisions, Tab 16*

**Extract of booklet *Careers in Construction: Crane Operator (2010-2011 Edition); Commission de la construction du Québec*; Book of Exhibits, Tab 1**

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<sup>3</sup> There are exceptions to this requirement for anyone who has practised the trade and gained experience in working hours equivalent to the apprenticeship period, or who has an equivalent certificate from elsewhere in Canada (c. R-20, r. 8, ss. 5(2). (3)).

**Course outline for *Conduite des grues*, Centre de formation en conduite d'engins de chantier et de grues (Atelier-école Les Cèdres); Book of Exhibits, Tab 2**

16. The apprentice may then complete an apprenticeship period of 2,000 hours in order to be eligible to write the provincial qualification examination that leads to obtaining the journeyman competency certificate for the trade.

***Regulation respecting the vocational training of the workforce in the construction industry*, c. R-20, r. 8, Sch. A, Group II, s. 3; Book of Legislative Provisions, Tab 15**

17. The vocational studies diploma does not include any specific course dealing with training for tower crane operations, nor are there any specific requirements that the apprenticeship period include operational experience using a tower crane.

18. The journeyman competency certificate that is issued upon successful completion of the provincial examination is that of Crane Operator (*Grutier*).

**C. The Applicant's Application for Certification in Ontario**

19. The Applicant holds a Quebec certificate for the occupation of Crane Operator (*Grutier*).

20. In 2005, the Applicant submitted an application for a Mobile Crane Operator Branch 2 certificate in Ontario. The Applicant was allowed to write the licensing exam for this certificate, but he failed the licensing exam twice.

**2005 Application for Certification of Qualification in a Certified Trade and related documents; Book of Exhibits, Tab 3**

21. In early 2009, the Applicant submitted an application for a "Crane Operator" 339A certificate in Ontario.

**2009 Application for Certification of Qualification in a Certified Trade and related documents; Book of Exhibits, Tab 4**

22. The 339A certificate corresponds to the Branch 1 Hoisting Engineer (Mobile Crane Operator) certificate.

23. On April 18, 2009, the Applicant was issued a Branch 1 Hoisting Engineer (Mobile Crane Operator) certificate, on the understanding that he was eligible to apply for and obtain the Mobile Crane Operator (Red Seal) certificate in Quebec, and pursuant to the *Trade and Cooperation Agreement Between Ontario and Quebec*.

24. The Applicant has also been issued matching certificates in several other jurisdictions. In Alberta, PEI, New Brunswick, and Nova Scotia (the only jurisdictions for which the Applicant has submitted his certificates), he is certified for the occupation of Mobile Crane Operator in each of those jurisdictions.

**2009 Application for Certification of Qualification in a Certified Trade and related documents; Book of Exhibits, Tab 4**

25. The Applicant now seeks to be certified in Ontario in the occupation of Branch 3 Hoisting Engineer (Tower Crane Operator).

**D. Relevant Provisions of Chapter 7 of AIT**

26. In August, 2009, all provinces and territories in Canada, except Nunavut, agreed to amendments to Chapter 7 of the AIT. The purpose of the amended 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.

***Agreement on Internal Trade, Article 701; Book of Legislative Provisions, Tab 2***

27. The Article 701 purpose is established as a core, mandatory requirement in Article 706: Certification of Workers:

.....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 process. (emphasis added)

***Agreement on Internal Trade, Article 706(1); Book of Legislative Provisions, Tab 2***

28. The obligation under Article 706 is that where an individual possesses a certificate from a Province to exercise an occupation, any other Province must issue a certificate to the individual where that Province's regulatory authority has an equivalent certificate for that same occupation.

29. This obligation is subject to certain conditions and exceptions set out in Paragraphs 3 and 4 of Article 706 and in Article 708: Legitimate Objectives. These are not of relevance to this dispute and therefore are not included in this submission.

### **PART III - ISSUE TO BE DECIDED**

30. Does Chapter 7 of AIT require Ontario to ensure that the Applicant is issued a Branch 3 Hoisting Engineer (Tower Crane Operator) certificate?

31. Ontario's submission is that there is no match between the Quebec Crane Operator occupation and the Ontario Branch 3 Hoisting Engineer (Tower Crane Operator) occupation. Therefore, Ontario is under no obligation pursuant to Chapter 7 of AIT to issue a Branch 3 certificate to the Applicant.

#### **A. No Matching Occupations**

32. Ontario would first emphasize its commitment to the labour mobility principles set out in Chapter 7. This commitment was clearly demonstrated when the Ontario Legislature passed the *Ontario Labour Mobility Act, 2009* (OLMA), which requires all Ontario regulatory authorities to comply with the Labour Mobility Code set out in OLMA. The OLMA Labour Mobility Code entrenches in Ontario legislation the labour mobility certification requirements set out in Chapter 7.

*Ontario Labour Mobility Act, 2009, S.O. 2009, c. 24; Book of Legislative Provisions, Tab 10*

33. Ontario submits, however, that its obligations under Chapter 7 do not apply with respect to the Applicant's request that the Ontario Director of Apprenticeship issue him a Branch 3 Hoisting Engineer (Tower Crane Operator) certificate, as demonstrated below.

34. Ontario does not dispute that the Applicant holds a certificate issued by the relevant regulatory authority in Quebec for the occupation of Crane Operator. Ontario submits, however, that the occupation of “crane operator” does not exist in Ontario and that no equivalent certificate for such an occupation is issued in Ontario. As such, Article 706(1) has no application to this complaint.

35. The definition of “occupation” in Article 711 of the AIT is:

..... a set of jobs which, with some variation, are similar in their main tasks or duties or in the type of work performed.

*Agreement on Internal Trade, Article 711; Book of Legislative Provisions, Tab 2*

36. As evidenced by the three discrete certificates issued by Ontario, Ontario has no single occupation that includes the “set of jobs” which comprise the set of jobs comprising the Crane Operator occupation in Quebec. Rather, Ontario has three Hoisting Engineer occupations; two that comprise jobs or tasks relating to the operation of mobile cranes, and a third comprised solely of a set of jobs or tasks relating to the operation of tower cranes.

## **B. Regulatory Distinctions For Each of Three Hoisting Engineer Operations**

37. The tasks that comprise the Quebec crane operator occupation are identified in paragraph 14 of this submission. In contrast, Ontario not only differentiates the main tasks of its three Hoisting Engineer occupations, it also imposes different training requirements for each certificate. It even establishes different apprenticeship wages for apprentices in each of the three Ontario occupations.

38. In this regard, Ontario clearly distinguishes between the equipment relating to the three occupations. Mobile crane is defined as:

“...a mechanical device or structure that incorporates a boom that,

(a) is capable of moving in the vertical and horizontal plane,

(b) is capable of raising, lowering or moving a load suspended from the boom by a hook or rope, and

(c) is mounted on a mobile base or chassis,

and includes a telescoping or articulated boom but does not include equipment that is used exclusively for fire-fighting or by automotive wreckers and tow trucks to clear wrecks and haul vehicles;

Tower crane, by contrast, is defined as:

“... a mechanical device or structure that is of the travelling, fixed or climbing type and that has,

(a) a boom, power driven drum and wire rope to raise, lower or move material, and

(b) a vertical mast or tower and jib.

***Hoisting Engineer Regulation made under the TQAA; R.R.O. 1990, Regulation 1060, s. 1; Book of Legislative Provisions, Tab 11***

39. In Ontario, only persons with a Branch 1 or Branch 2 mobile crane operator certificate may operate mobile cranes. Only persons with a Branch 3 tower crane operator certificate may operate tower cranes.

40. As well, there are different education and training qualifications for each of the three Ontario certificates. The apprentice training program for the Branch 1 mobile crane operator (individuals who are authorized to operate mobile cranes that raise or move any material over 16,000 pounds, i.e., no limit on maximum weight) requires completion of 3 periods, each of which includes 2,000 hours of apprentice training. For the Branch 2 mobile crane operator (individuals who are authorized to operate mobile cranes that raise or move materials weighing no more than 30,000 pounds) the requirement is completion of one apprentice training period of 1,000 hours of apprentice training. A Branch 3 (tower crane operator) requires completion of two apprentice training periods each of which must include 1,500 hours of apprentice training.

***Hoisting Engineer Regulation made under the TQAA; R.R.O. 1990, Regulation 1060, s. 5; Book of Legislative Provisions, Tab 11***

41. Those individuals who hold a Branch 1 mobile crane operator certificate (the mobile crane operator certificate with the broader scope of practice of the two mobile crane certificates) are not eligible to exercise the occupation of tower crane operator without first obtaining a Branch 3 tower crane certificate. To obtain that certificate, the

individual must complete a further 1000 hours of apprentice training to be eligible to write the examination for a Branch 3 tower crane certificate. And, if the individual holds a Branch 2 certificate, the required additional apprentice training for a Branch 3 certificate are a further two apprentice training periods of 1,000 hours each.

***Hoisting Engineer Regulation made under the TQAA; R.R.O. 1990, Regulation 1060, ss. 7, 8; Book of Legislative Provisions, Tab 11***

42. On the other hand, for a Branch 3 tower crane certificate holder to be eligible for a Branch 1 mobile crane certificate, he or she must complete two further apprentice training periods of 2,000 hours each (or one period of 1,000 hours for a Branch 2 certificate).

***Hoisting Engineer Regulation made under the TQAA; R.R.O. 1990, Regulation 1060, s. 6; Book of Legislative Provisions, Tab 11***

43. Thus, none of the three Hoisting Engineer occupations in Ontario is seen as functionally equivalent to each other, in that certification in one occupation is not deemed to be sufficient to practice in another without completing additional apprentice training periods.

44. As noted above, even the wage rates established by regulation for apprentices in the three hoisting engineer occupations are different.

***Hoisting Engineer Regulation made under the TQAA; R.R.O. 1990, Regulation 1060, ss. 10-13; Book of Legislative Provisions, Tab 11***

45. All of these indices are evidence of the fact that Ontario has three discrete hoisting engineer occupations and no single occupation that is equivalent to the Quebec occupation of crane operator.

### **C. Functional Differences in Occupations (Tower Crane vs. Mobile Crane)**

46. Ontario submits that there are significant functional distinctions in the three separate occupations, in particular between the occupation of mobile crane operator and tower crane operator.

**Letter from Operating Engineers Training Institute of Ontario dated December 7, 2011 with attached chart; Book of Exhibits, Tab 5**

47. For example, in terms of assembly and disassembly, tower crane operators have significantly more duties and responsibilities than mobile crane operators, although there is some assembly involved for both occupations.

48. The operational characteristics of each occupation are also distinct. For example, mobile crane operators operate from a cab on a vehicle at ground level. The crane operates by diesel engine. There can be wind effect on the boom, in the range of 20% most of the time. The operator can generally see the load being lifted.

**Letter from Operating Engineers Training Institute of Ontario dated December 7, 2011 with attached chart; Book of Exhibits, Tab 5**

49. In stark contrast, tower crane operators operate from a cab in the range of 75 to 250 feet in the air, on a freestanding tower, which itself is often erected on top of a construction site. The tower can be subject to sway. The crane operates primarily by an electrical system. There is wind on 100% of the boom all the time. The operator can generally not see the load being lifted, and therefore operates with the assistance of two-way communication.

**Letter from Operating Engineers Training Institute of Ontario dated December 7, 2011 with attached chart; Book of Exhibits, Tab 5**

50. Ontario requires that tower crane operators be competent on two distinct types of tower cranes: Hammerhead/Saddle jib cranes and Luffing jib cranes.

51. Therefore, the functional differences between the two main types of Hoisting Engineer occupations in Ontario (mobile crane operator compared with tower crane operator) are significant.

52. Ontario submits that there are also strong policy reasons underlying the separation of the Hoisting Engineer trade into three distinct occupational branches. The establishment of three branches facilitates increased entry into the labour market by

allowing individuals to be certified and work in a Hoisting Engineer branch without needing to complete the training qualifications for all three branches.

**Affidavit of Virginia Hatchette sworn December 9, 2011, paragraph 4; Book of Exhibits, Tab 6**

53. If Ontario were required to amalgamate all three branches of the trade into one single occupation of Hoisting Engineer, this could create a barrier to entry into the trade in that it would be overly onerous on potential tradespersons to be required to complete the training qualifications for all three branches if they only wished to perform one of the Hoisting Engineer occupations.

**Affidavit of Virginia Hatchette sworn December 9, 2011, paragraph 6; Book of Exhibits, Tab 5**

#### **D. Interprovincial Standards Red Seal Program**

54. Ontario submits that further demonstration of the distinction between the occupation of mobile crane operator and tower crane operator is found by giving consideration to the treatment of the Ontario Branch 3 Hoisting Engineer (Tower Crane Operator) certificate under

- a. the Interprovincial Standards Red Seal Program, and
- b. bilateral agreements between Ontario and Quebec and labour mobility regulations relating to the Quebec crane operator certificate.

55. Both before and after the 2009 amendments to Chapter 7, labour mobility in Canada for persons certified in a compulsory construction trade and depending on the trade, might be achieved through one or more of the following means:

- (a) The individual holds a certificate in a trade which certificate bears a seal or endorsement, depending on the trade, awarded for passing an Interprovincial Red Seal Examination. Based on that seal or endorsement, the destination province or territory may allow the individual to work in the jurisdiction without a certificate and/or issue the individual a certificate with no testing or assessment.

(b) If the individual's certificate does not bear the seal for passing the Interprovincial Red Seal Examination or if a destination jurisdiction does not participate in the Interprovincial Standards Red Seal Program, but the two jurisdictions agree to match the trade, e.g., agree that a particular trade in the two jurisdictions "match" in scope of practice and standards, they can agree that the relevant regulatory authority in the destination jurisdiction either will issue its own certificate or permit the individual to perform the trade on the basis of the originating jurisdiction certificate.

(c) The regulatory authority in the destination jurisdiction assesses the individual's qualifications and training and determines if that individual meets the criteria to write the jurisdiction's required certification examination (e.g., Ontario) or otherwise has equivalent qualifications and issues a certificate of qualification.

56. The Interprovincial Standards Examination referenced above is a key element of the unique labour mobility scheme for the trades that has been in place in Canada for more than 50 years. This is the Interprovincial Standards Red Seal Program, a program established under a partnership between Canada, the provinces and the territories to provide greater mobility across Canada for skilled workers, based on the establishment of common interprovincial standards for skilled trade occupations. The Interprovincial Standards Red Seal Examination endorsement on a certificate indicates to provinces and territories that the individual has received training and certification in a trade to a recognized national standard developed by the industry.

The Red Seal allows qualified tradespeople to practise their trade in any province or territory without having to write additional examinations, thus improving labour mobility in Canada and saving time and resources by eliminating the need for multiple examinations. Labour mobility means that workers qualified for work in a particular occupation in one jurisdiction have access to similar employment opportunities in any other Canadian jurisdiction. HRSDC and its partners work to reconcile national occupational standards to allow workers access to jobs across Canada.

The Canadian Council of Directors of Apprenticeship (CCDA) is responsible for the management of the Interprovincial Standards Red Seal Program among other

things. The CCDA works with industry in the development of a skilled labour force, and in the facilitation of labour mobility throughout Canada.

**“Red Seal Program”, Human Resources and Skills Development Canada (extract from website: [http://www.hrsdc.gc.ca/eng/workplaceskills/trades\\_apprenticeship/red\\_seal/index.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/trades_apprenticeship/red_seal/index.shtml)); Book of Exhibits, Tab 7**

57. Notwithstanding the certification obligation set out in Article 706(1), the Parties to the AIT remain committed to the continued operation of the Interprovincial Standards Red Seal Program. This is seen in Article 706(2) which explicitly recognizes the continuing relevance and operation of this program:

Subject to paragraphs 3, 4 and Article 708, each Party shall recognize any worker holding a jurisdictional qualification bearing the Red Seal endorsement under the Interprovincial Standards Red Seal Program as qualified to practice the occupation identified in the certification.

***Agreement on Internal Trade, Article 706; Book of Legislative Provisions, Tab 2***

58. The only crane operator-related occupation that is recognized as of the date of this submission for the purpose of the Interprovincial Standards Red Seal Program is Mobile Crane Operator (corresponding to the Ontario occupation Branch 1 Hoisting Engineer (Mobile Crane Operator)). A National Occupational Analysis for this Red Seal Trade has been prepared by HRSDC, and was completed in 2009.

**National Occupational Analysis: Mobile Crane Operator; Book of Exhibits, Tab 8**

59. HRSDC, in consultation with trade representatives from several provinces, including Ontario and Quebec, is currently developing a National Occupational Analysis for the Red Seal Trade of Tower Crane Operator.

**Draft National Occupational Analysis: Tower Crane Operator (Draft 2) ; Book of Exhibits, Tab 9**

60. Ontario submits that this is further evidence that the occupations of mobile crane operator and tower crane operator are distinct and unique occupations. Ontario submits further that the development of two separate and distinct occupations under the Red Seal Program for Mobile Crane Operator and Tower Crane Operator shows that both industry

and regulators across the country have acknowledged this functional distinction between the two occupations.

#### **E. Bilateral Ontario-Quebec Agreements Relating to Matching Certificates**

61. Even more evidence of the lack of equivalency between the Quebec crane operator certificate and Ontario occupations is found in the bilateral Ontario and Quebec labour mobility related agreements. In 2006, Ontario and Quebec entered into a bilateral *Agreement On Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry (2006)* (“the “Ontario-Quebec Construction Industry Agreement”). The purpose of the agreement, which replaced all previous bilateral labour mobility agreements between the two provinces, was to facilitate access to the construction labour markets in both provinces. It provided that a worker from Ontario or Quebec holding a certificate in one of a list of trades specified in Appendix 1 of the agreement was not required to obtain further certification in the other jurisdiction in order to work in a trade.

62. Appendix 1 lists Ontario’s “Mobile Crane Operator (red seal)” certificate as matching only to Quebec’s “Opérateur de grue automotrice – sceau rouge” certificate. There was no match identified for Ontario’s Tower Crane Operator certificate.

*Ontario-Quebec Construction Industry Agreement, Section 2.1.7 and Appendix 1, Table 2C; Book of Exhibits, Tab 10*

63. In similar fashion, a further Ontario-Quebec trade agreement was signed by the two provinces in September 2009, the *Trade and Cooperation Agreement Between Ontario and Quebec* (Trade and Cooperation Agreement). Part IV, Chapter 6 (Specific Commitments and Rules) of this 2009 Agreement deals with labour mobility. It duplicates in most respects, the core provisions in Chapter 7 of the AIT (except the legitimate objective permissible exceptions in Article 708 of the AIT).

64. Most relevantly for the purposes of this dispute, Annex 6.2 specifically identifies the professions and trades for which each province agreed it would ensure a worker

certified in the other province would be certified in the other province with no requirement for material additional training.

65. Again, the only crane operator/hoisting engineer trades or occupations which the Parties agreed matched sufficiently for the purpose of mutual certification were the Quebec mobile crane operator (Red Seal) and Ontario's Mobile Crane Operator, Branch 1 (Red Seal). Again, there is no match identified for Ontario's Tower Crane Operator certificate.

*Trade and Cooperation Agreement, Article 6.2.4 and 6.5.1; Book of Exhibits, Tab 11*

66. In short, the 2009 Ontario-Quebec agreement, signed almost contemporaneously with the 2009 AIT amendments, clearly identified Quebec's recognition and acceptance that there was no matching occupation or equivalent certificate in Quebec that matched to the Ontario Tower Crane Operator occupation.

#### **PART IV – CONCLUSION**

67. For the reasons set out above, it is evident that Ontario has no obligation under Article 706.1 to issue the Applicant with either the Branch 1 or Branch 2 Mobile Crane operators certificates, nor the Branch 3 Tower Crane operator certificate.

68. Nevertheless, in anticipation that the Ontario-Quebec bilateral 2009 *Trade and Cooperation Agreement* would match the Ontario Mobile Crane Operator certificate with an equivalent Mobile Crane Operator (Red Seal) certificate in Quebec, and in anticipation that the Applicant was eligible to apply for and obtain the Mobile Crane Operator (Red Seal) certificate in Quebec, the Ontario Director of Apprenticeship did issue the Applicant a Branch 1, Mobile Crane Operator certificate.<sup>4</sup>

69. Ontario also would note that active discussions are in progress among the members of the CCDA directed at reaching agreement on the establishment of national standards for an Interprovincial Red Seal examination for the occupation of tower crane operator.

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<sup>4</sup> In practice, the issuance of a Branch 1 mobile crane operator certificate makes the issuance of a Branch 2 mobile crane operator certificate unnecessary. That is, the Branch 2 certificate is limited to hoisting weights of no more than 30,000 pounds. The Branch 1 certificate has no weight restriction.

If Quebec agrees to participate in the Interprovincial Red Seal Standards examination and if the Quebec Construction Commission grants the Applicant a crane operator certificate bearing the seal that he has passed the interprovincial Red Seal standards examination for the tower crane occupation, the Director of Apprenticeship will forthwith issue him a Branch 3 tower crane certificate without any requirement for any further material assessment or examination.

70. Until such time, however, it remains Ontario's position that until the Director of Apprenticeship is satisfied that the Applicant meets the requirements for a Branch 3 Hoisting Engineer (Tower Crane Operator) certificate, the Director is under no obligation pursuant to Chapter 7 of the AIT to issue such certificate.

#### **PART V – OPERATIONAL COSTS**

71. Ontario submits that the Panel does not have jurisdiction under Chapter 17 of the AIT to apportion Operational Costs in a person to government dispute.

72. Article 1706(3) sets out the matters on which a Panel may issue a report in a government to government dispute. The Report shall contain :

(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 as provided in Annex 1705(1) (*Rules of Procedure*). [emphasis added]

*Agreement on Internal Trade, Article 1706(3); Book of Legislative Provisions, Tab 3*

73. In contrast, Article 1716(2) of the AIT sets out the matters on which a Panel may issue a report in a person to government dispute. These are as follows:

- (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.

***Agreement on Internal Trade, Article 1716(2); Book of Legislative Provisions, Tab 3***

74. Significantly, in a person to government dispute, Article 1716(2) does not authorize the Panel to make a determination as to apportionment of Operational Costs. Ontario submits that this is clear indication that the drafters of the AIT did not intend Operational Costs to be apportioned to either of the disputants in a person to government dispute.

75. This interpretation is further bolstered by the amendments to the Rules of Procedure set out at Annex 1705(1). In the preamble to this Annex, the AIT specifically states that the rules “should not be construed to extend or limit the jurisdiction of Presiding Bodies”. Therefore, the Panel’s authority derives from the terms of Chapter 17 itself, and not from Annex 1705(1).

***Agreement on Internal Trade, Annex 1705(1); Book of Legislative Provisions, Tab 4***

76. The rules define a Disputant to a proceeding as the Complaining Party, or a person of a Party. Participants include Disputants and Intervenors.

77. “Party” is defined at Article 200 of the AIT as a party to this Agreement, or in other words as one of the signatory Provinces. A “person of a Party” is defined as either a natural person resident in the territory of a Party, or an enterprise of a Party”.

***Agreement on Internal Trade, Article 200; Book of Legislative Provisions, Tab 1***

78. Rule 55 of Annex 1705(1) states that a Panel may apportion Operational Costs to the participating Parties at its discretion. Ontario submits that it is significant that the AIT does not say that Operational Costs may be apportioned to Disputants or to Participants.

*Agreement on Internal Trade, Annex 1705(1), Rule 55; Book of Legislative Provisions, Tab 4*

79. In fact, in the previous version of Annex 1705.1, which was contained in the Seventh Protocol of Amendment dated May 2, 2007, the corresponding Rule 50 stipulated that Operational Costs were to “be divided equally between disputants” [emphasis added].

*Agreement on Internal Trade, Seventh Protocol of Amendment, Annex 1705.1; Book of Legislative Provisions, Tab 6*

80. Ontario submits therefore that the amendments to Articles 1706 and 1716, made by the Tenth Protocol of Amendment dated October 7, 2009, removed the jurisdiction of the Panel to apportion Operational Costs to Disputants in person to government disputes. This is consistent with the corresponding amendment to Rule 55 of Annex 1705(1).

## **PART VI – ORDERS SOUGHT IN THIS DISPUTE**

81. Ontario asks that the Panel dismiss the complaint and uphold the decision of the Director of Apprenticeship under the *TQAA* to refuse to issue the applicant a Branch 3 Hoisting Engineer (Tower Crane Operator) certificate of qualification.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 12<sup>th</sup> day of December, 2011

**Original signed**

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Darrell Kloeze  
Crown Law Office (Civil Law)  
Attorney General for Ontario