



**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
<i>Notice of Measure</i>	<i>Notice of Measure to Achieve a Legitimate Objective under Chapter 7 of the Agreement on Internal Trade, Government of Ontario, Nov. 6, 2009</i>
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<sup>1</sup>. These expert advisors found that the

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<sup>1</sup> *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<sup>2</sup>. 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<sup>3</sup> 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<sup>4</sup>.

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.<sup>5</sup> 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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<sup>2</sup> *Brondesbury Report* (2008)

<sup>3</sup> 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

<sup>4</sup> 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.

<sup>5</sup> The Ontario expert advisors acknowledged 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<sup>6</sup>. 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...<sup>7</sup>

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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<sup>6</sup> *Communiqué*, The Council of the Federation, August 10, 2007

<sup>7</sup> *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.<sup>8</sup> 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.<sup>9</sup>**

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

<sup>9</sup> 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.<sup>10</sup>

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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<sup>10</sup> *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”<sup>11</sup> and that “Ontario is the financial markets capital of Canada”<sup>12</sup>. 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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<sup>11</sup> Ontario Submission, paragraph 73, page 29

<sup>12</sup> 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.<sup>13</sup>

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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<sup>13</sup> 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.<sup>14</sup> 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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<sup>14</sup> 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.<sup>15</sup> (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

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<sup>15</sup> *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<sup>16</sup> 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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<sup>16</sup> *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.

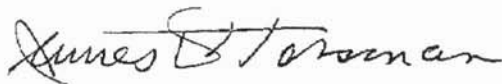
In its request, Manitoba cites Rule 29 of Annex 1705 (1) whereby the Panel may allow further written submissions and shall fix the time for their filing.

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 Complainant 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 Complainant 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 Complainant Party, and that a Party understands this distinction in choosing not to join the dispute as a Complainant 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.

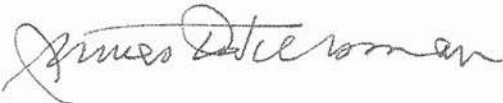
As Intervenors, British Columbia and Alberta advised there is no proprietary or confidential information in their written submissions. Saskatchewan did not respond so there is a presumption of no confidential information in its submission.

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