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December 19, 2016

Regulatory Consistency: Credential Recognition of Foreign Trained Professionals

Credential recognition of foreign trained professionals involves highly complex processes with significant variation across Canada. Immigrants coming to Canada face information shortages, difficulty demonstrating equivalency, and conflicting standards across different provinces. These barriers also exist for Canadian-trained professionals moving across provinces, but the barriers have an especially detrimental effect on foreign trained professionals. When facing these barriers, many foreign trained professionals seeking to enter the labour market are unable to practice their profession and rare forced to take jobs for which they are over-qualified. While requiring high standards for the protection of public safety and professional quality guarantees are appropriate in many cases, they also serve disincentivize workforce participation. This paper will specifically address differing standards and requirements across provincial jurisdictions which place added barriers to workforce access. Simplification of this complex interprovincial regulatory environment will provide for greater regulatory coherence and provide a framework in which credential recognition can be simplified. Though not a straight-forward proposition by any means, this paper will seek to reduce institutional barriers in order to create more coherent governance practices.

This paper will address institutional problems associated with the recognition of the credentials of foreign workers indirectly. The focus of this paper will instead be on internal governance challenges obstructing efforts to harmonize regulatory standards across Canada. This paper will proceed by discussing how a policy window may have been opened due to the signing of the Comprehensive Economic and Trade Agreement (CETA) and the challenges Section 11 of the agreement faces in Canada. It will continue to make the case for harmonization and survey different harmonization models. The core of this paper will explore barriers that obstruct the

realization of harmonization benefits and offer a path forward for policy makers. The recent signing of CETA opens a policy window and therefore an opportunity for Canada to address varying regulatory standards across provincial jurisdictions and reduce barriers to the recognition of credentials of foreign trained professionals.

Before proceeding, it is valuable to recognize the limitations of this paper. This paper offers a largely macro overview of regulatory policies across Canada. It does not, therefore, consider individual professional or trades regulators. Individual analysis of regulators of a single profession in different provincial jurisdictions would be valuable and necessary to achieve the recommendations of this paper. Furthermore, this paper does not layout a concrete strategy for inter-provincial engagement to achieve the change for which this paper advocates. Finally, this paper does not address policy considerations associated with credential recognition of foreign workers from a human rights perspective, an immigration perspective, or a labour shortage perspective. Instead, the focus of this paper is on the governance and institutional constraints faced by the current system. Though this is not a particularly exciting topic, the realization of regulatory harmonization has the potential to inspire consequential positive effects on other files. This is a particularly difficult file to achieve reform as there are no shortcuts to the hard work and leadership required to affect meaningful change.

Governance in the Canadian Context

More explicitly, this paper argues that the central governance challenge faced by credential recognition of foreign professionals stems from inter-provincial regulatory inconsistencies. As such, the problem could be better understood as an inter-provincial mobility challenge. Domestic and foreign trained professionals alike face similar regulatory

inconsistencies across different provincial jurisdictions. While there are certainly instances where this is justifiable, inconsistencies should be the exception not the rule. It is appropriate to address this aspect of foreign credential in this paper as it remains a significant challenge for recognition of credentials. Furthermore, consideration of the mutual recognition agreements outlined in Section 11 of the CETA may play a significant role in mobilizing action on this difficult file. In this way, CETA may act as a catalyst to open a policy window through which change may be more plausible. Before discussing what this window offers, it is important to situate our discussion within current governmental policies, programs, and priorities.

Provinces in Canada are responsible for overseeing credential recognition in their respective jurisdictions. This authority is often delegated to individual regulators, boards, or colleges responsible for managing a particular profession. Identification of regulatory and oversight mechanisms in individual provinces is a valuable exercise. This exercise is, however, also time consuming and not necessarily conducive to understanding the broad challenges faced across the country. As this paper is more interested in realizing inter-provincial standardization and the reduction of cross-jurisdictional barriers, it is appropriate to consider the involvement of the federal government and of interprovincial groups such as the Forum of Labour Market Ministers (FLMM).

Federally, the Foreign Credential Recognition Program is managed by Employment and Social Development Canada (ESDC). It is listed as sub-program 2.1.17 in ERDC's Plans and Reports for 2016-17 as part of a broader strategic mandate to pursue "a skilled, adaptable and inclusive labour force and an efficient labour market." (ERDC Plans and Priorities) The same document indicates the main responsibilities of the Foreign Credential Recognition Program are to "facilitate [the] credential recognition process and ensure they are fair, consistent, transparent,

and timely." This program unit is especially applicable to our discussion when the following description is considered:

> *The Foreign Credential Recognition Program also works to implement domestic labour mobility initiatives, and complements the Agreement on Internal Trade, by facilitating national coordination among partners and reducing barriers faced by workers in regulated occupations as they pursue employment opportunities across the country.* (ERDC Plans and Reports)

This program clearly defines itself within a management or facilitator role, directly addressing the challenges identified in this paper. Clearly, a discussion on improving interprovincial labour mobility – as it relates to the Agreement on Internal Trade – is particularly significant.

The priority of the federal government can partially be seen in a framework developed in concert with the Foreign Credential Recognition Program and the Forum of Labour Market Ministers (FLMM). *A Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications* seeks to outline a new vision for governments to take action together to "improve the integration of immigrants and other internationally-trained workers into the Canadian Labour Market." (Pan-Canadian Framework) This document further focuses on improving what is a frustrating system for immigrants with difference in reliable information for requirements, processes, and clear expectations before immigration. It advocates for the principle that an internationally-trained individual cannot be treated differently than a domestically-trained individual after certified in one province. Finally, the primary principles of this framework are fairness, transparency, timeliness, and consistency.

It is important to recognize that this file is not currently neglected. However, despite attention, many of the challenges identified in the framework persist. This paper should be situated within the general context of this framework as its analysis and recommendations complement the principles being pursued. More particularly, this paper can be situated within the

framework's focus on the principle of consistency. In other words, consistency should be the default for regulatory requirements unless differences are clearly justifiable. Principles such as fairness and transparency would likely also be applicable to this paper as consistency and harmonization would inevitably lead to a more open system. This paper should also be understood within the context of the second implementation strategy: assessment and recognition. In order for its recommendations to be relevant, this paper will situate its analysis within the context of ongoing policy work.

Opening of a Policy Window

Attempts to harmonize provincial regulatory standards and remove barriers obstructing trade and labour mobility are not a new innovation. Interprovincial cooperation and protecting internal trade were among the impetuses for Confederation. More recently, the signing of the Agreement on Internal Trade (AIT) by all provincial and territorial leaders in 1995 and significantly updated in 2009 strives to realize the benefits of harmonization. The following is an overview of the agreement:

> *The establishment of the AIT marks a significant achievement in helping to remove the existing interprovincial trade barriers, prevent establishment of new barriers, and harmonise interprovincial standards. These actions reduce extra costs to Canadian businesses by making internal trade more efficient, increase market access for Canadian companies, and facilitating work mobility for tradespeople and professionals.*
> (Agreement on Internal Trade)

Unfortunately, these principles have not achieved the degree of success to which they have aspired. As this paper is not a critique of implementation of this agreement, it is sufficient to say that for the purposes of this paper, many barriers persist which obstruct labour mobility of tradespeople and professionals across provincial jurisdictions. While differences may sometimes be justifiable, there appears to be little incentive for individual regulatory bodies to standardize

practices with other jurisdictions on their own accord. These structural barriers are intensified when the complexity of foreign credential recognition is added to the equation.

Despite the persistence of these challenges and the continued frustration of many of the advocates of harmonization, a policy window is opening that may act as a catalyst for meaningful reform. The instigator of this window and potential catalyzer for change was the signing of the Comprehensive Economic and Trade Agreement (CETA) in October 2016. More particularly, Section 11 of the agreement entitled 'Mutual Recognition of Professional Qualifications' is the source of this potential window opening. Section 11 establishes a detailed framework for the negotiation of mutual recognition agreements (MRAs) between Canadian and EU regulators and professional bodies. (Global Affairs Canada, CETA Section 11) These agreements are negotiated on a case-by-case basis recognizing the roles of the regulators and the oversight and support capacity to governments. MRAs are voluntary arrangements and the section importantly recognizes that "the regulation of professional qualifications… ensures the preservation of high standards of professional competence for public protection and safety." (Global Affairs Canada, CETA Section 11) While the importance of regulation and maintaining standards is recognized, this agreement is likely to inspire the negotiation of MRAs between interested professions. These negotiations would necessarily be incredibly complex and likely to fail if external professions had to negotiate with ten separate provincial regulators with differing standards in order to come to an agreement. Proactive action taken to work toward greater harmonization would greatly alleviate these future problems.

This policy window thus brings the issue of regulatory harmonization between provincial jurisdictions back to prominence. Currently, an interested professional body in Europe would have a difficult time negotiating a MRA with their Canadian counterparts. Differing standards

exist across Canada for various professional regulators. Without innovation, MRAs are more likely to be reached between individual provinces and European professional bodies than pan-Canadian agreements. Diffuse governance structures and the institutional barriers preventing standardization may severely affect Canada's ability to take advantage of the benefits offered through MRAs.

Jurisdictional Models

Cross-jurisdictional harmonization of regulatory standards is a daunting premise with tremendous complexity. This is not, however, to say that barriers are necessarily insurmountable. Three jurisdictional case studies have been identified as offering valuable insights to similar challenges. Though this paper will not engage in each case study in considerable depth, each model will be introduced for the purposes of reflecting on the merits of various harmonization approaches. First, this paper will look at harmonization of certain professional regulatory standards between France and Québec, paying particular attention to the effect of mutual recognition agreements. Second, this paper will examine the New West Partnership Trade Agreement (NWPTA) between Saskatchewan, Alberta, and British Columbia as a provincial harmonization model. Finally, this paper will survey challenges faced by the European Union's efforts to harmonize professional regulatory requirements. Together, these three examples can offer insights into how to address similar institutional mobility barriers.

On October 17, 2008, Québec signed the France-Québec Agreement on the Mutual Recognition of Professional Qualifications which sought to facilitate MRAs between regulatory bodies in France and Québec. The purpose of this agreement was to attract qualified professionals in regulated professions and trades, speed up recognition procedures, boost

competitiveness, and address immigration needs. (Quebec, "Labour Mobility Agreements" 2016) This agreement had a strong influence on the inclusion of Section 11 of the CETA and is a relevant case study to consider regarding the opening of a policy window in this area. Today, Québec's Ministry of International Relations and La Francophonie publishes a list of MRAs completed by 26 professional associations and approximately 50 trades. For all professions covered by a MRA, this has allowed for greater labour mobility for workers receiving qualifications in either partner jurisdiction. A supplementary benefit of this agreement was the clarification of Québec's system for credential recognition as requirements have become more clear and transparent. Relevant for consideration of this paper, MRAs are assessed on a case-by-case basis with processes led by industry and professional bodies and supported by the provincial government.

On April 30, 2010, the New West Partnership Trade Agreement (NWPTA) was signed between the governments of British Columbia, Alberta, and Saskatchewan (with Manitoba formally joining on January 1, 2017). This agreement shows concrete progress toward many of the ideals of the Agreement on Internal Trade including the reduction of interprovincial trade and mobility barriers. (Agreement on Internal Trade 2015) The existence of NWPTA shows that the pan-Canadian Agreement on Internal Trade has yet to realize its goals. The NWPTA requires government and public entities to remove impediments, obstacles, and all other forms of discrimination applying to all government measures affecting trade, investment, and labour mobility except when a clear justification can be made. (NWPTA FAQ 2016) In the specific case of credential recognition, this agreement requires the regulatory authorities within each jurisdiction "certify each others' certified workers without requiring material, additional training or examinations." (NWPTA FAQ 2016) It is important to note that this agreement does not

require signatories to lower their standards or regulations concerning credential recognition. Instead the NWPTA commits signatories to "work together collaboratively to identify impediments to the movement of people from one province to the other, determine why the difference that create impediments exist, and consider whether these differences are truly necessary." (NWPTA FAQ 2016) This commitment recognizes that standards and regulations may differ for legitimate reasons, but a requirement to justify differences is essential to the agreement. This creates the effect of a negative list – a notable change from the positive list approach in the Agreement on Internal Trade. The negative list principle is also followed in Section 11 of the CETA. Apart from justified exceptions, the expectation is for all credentials to be recognized if approved in partner jurisdictions.

Like Canada, the European Union is comprised of multiple jurisdictions with differing regulatory systems and standards and is facing considerable challenges in its attempts to pursue greater standardization. The EU actively seeks to standardize regulatory systems in order to "promote automatic recognition of professional experience across the EU." (European Commission, "Recognition" 2016) Directives 2005/36/EC and 2013/55/EC automatically recognize professional qualifications of seven professions across the EU that meet a specific EU-wide standard. These professions include: "nurses, midwives, doctors (general practitioners and specialists), dental practitioners, pharmacists, architects and veterinary surgeons." (European Commission, "Recognition" 2016) One recent innovation pursued was the establishment of the European Professional Card (EPC) for five professions to make free movement of professionals more efficient. Additionally, the EU commissioned a transparency and mutual evaluation exercise across the EU between 2014 and 2016. This exercise asked member states to list professions they regulate as well as asked them to evaluate the merits of respective barriers in

place that may or may not be necessary. (European Commission, "Transparency" 2016) Both recent innovations demonstrate a desire to simplify complex regulatory processes, improvements for access to information, and a commitment to follow the efficiencies offered through harmonization of specific credentials.

Each case study provides an introduction to recognition efforts in various jurisdictions. The models pursued in each case are particularly useful for this study is the models. Québec and France demonstrate a bilateral model for regulatory harmonization under similar circumstances to the CETA's introduction of MRAs. This case shows bilateral harmonization efforts initiated on a case-by-case basis according to the priorities of respective professional regulatory bodies and supported by the government. The NWPTA demonstrates provincial-led commitment to removing regional barriers to labour mobility and introduces the innovative concept of a negative list approach to regulatory harmonization. This is to say that there is a requirement to justify any difference in regulations and consistency in standards should be the default position. Finally, the EU showcases two particularly interesting innovations: a professional card and a transparency and mutual evaluation exercise. These innovations demonstrate a modern approach to reducing administrative inefficiency and a commitment to information gathering. In sum, each jurisdictional approach offers lessons for this paper and helps to inform a path forward in pursuit of greater inter-provincial harmonization in Canada.

Offering a Path Forward

The remainder of this paper will concentrate on how progress can be made and greater interprovincial harmonization can be introduced. This section will be framed around four challenges or barriers to harmonization of recognition requirements across Canadian provincial

jurisdictions. These four barriers will be matched with four action areas. This paper will outline a path that seeks to navigate these barriers. It will contextualize this path forward within the context of existing institutions and governance practices across the credential recognition file. Unfortunately there is no perfect solution to this institutional challenge and progress is more likely to be had by inching forward incrementally than by radically changing current institutional setups. Though this outlined path is by no means sufficient to address these challenges in and of itself, it provides insight into how this institutional challenge may be approached.

The recommended path forward places the federal government in a leadership position on the file and requires provincial governments to engage and take initiative for professional associations under their purview. This paper recognizes that there are many barriers obstructing progress on this file. These barriers may include the following:

1) Lack of political will and resource scarcity across jurisdictions;
2) Interprovincial competitiveness and threats to provincial regulatory autonomy;
3) The principle of delegated authority and the lack of government control of regulatory differences; and
4) Legitimate and reasonable regulatory differences.

Recognizing these challenges to harmonization, this paper will proceed to outline a path forward. This path considers the policy window, current institutional design, and harmonization models offered in other jurisdictions. The path forward will consist of the following broad elements:

1) Identification of interprovincial mobility as a policy priority and leadership on the file by the federal government;
2) Process of stakeholder negotiation to procure buy-in from provinces;
3) Process of data collection and regulatory transparency; and
4) Construction of an accommodation mechanism for legitimate difference.

This is not a particularly attractive solution and action taken in these areas will not immediately make headlines. This is, however, a path forward that will proactively seek harmonization across

credential regulators. It offers the potential to place Canada in a more competitive position, while simultaneously improving inter-provincial mobility across Canada.

1) Policy Priority

The most significant challenge this file faces is demonstrating that action addressing these challenges are key policy priorities for multiple jurisdictions across Canada. More particularly, leadership is required on this file to ensure it receives the attention it requires. Further to this end, significant resources must necessarily be allocated to support progress. The most significant barrier is therefore lack of political will to make mobility a policy priority. Fighting for greater efficiency and regulatory harmonization is inherently difficult work. It would require the review of hundreds of professional and trades-based bodies across multiple provincial jurisdictions. Furthermore, there are few tangible end products that a government could easily announce to show progress. Much of the work required would be done behind the scenes before any public-facing benefits could easily be seen.

This barrier can be partially overcome through federal leadership and the investment of sufficient resources into addressing this institutional challenge. Federal leadership on the file would likely involve several departments, including Employment and Social Development Canada (ESDC). Additionally, it would require federal leadership on interprovincial tables such as the Forum of Labour Market Ministers (FLMM). The identification of which federal bodies will lead this file is of secondary importance in this instance to identifying the need for federal leadership and commitment of resources. The first step is therefore related to agenda setting and the demonstration that this is a policy priority for the federal government.

2) Stakeholder Negotiation

Following identification of this file as a policy priority, the second challenge to surmount will come from opposition and intransigence from provincial governments and professional bodies. Apart from overcoming provincial resource scarcity and potential priority setting reluctance, provinces may cynically oppose measures to harmonize differences in credential recognition requirements. Regulatory differences may result in a disincentive for credentialed workers to leave their home provinces. Similarly, provinces who devote resources toward ensuring immigration quotas that seek to identify specific skills, trades, and professions needed in provincial economies may object to greater interprovincial mobility. These objections may be rooted in the conception that their resource investment in immigration settlement and success may not receive the benefits of long run economic and social returns. Finally, increased federal involvement in a constitutionally provincial responsibility is likely to inspire opposition. Though many of these objections would lack broad appeal, it is important to acknowledge that there are tangible benefits for maintaining the status quo. In sum, there are several reasons why a province may have a perceived interest in obstructing movement toward regulatory harmonization.

This discussion is not meant to imply that provincial governments will choose to obstruct harmonization efforts if they were to materialize, but rather to say there is potential for significant opposition. This opposition could be overcome through leadership using interprovincial tables such as the FLMM. Furthermore, featuring credential regulation harmonization on the agenda for interprovincial conferences would increase the potential for success. Clear demonstration of benefits, assurances of cost sharing, guarantees for certain legitimate exceptions to harmonization, and protection of current power divisions will help to assuage the threat of provincial opposition. While interprovincial matters are never easy, engagement of federal and provincial governments on this file is critical. While the NWPTA

shows evidence of provincial collaboration without significant federal influence, the federal government is best placed to facilitate these processes.

3) Data Collection

A significant barrier to both interprovincial harmonization and to the migration of foreign trained professionals in general, is a lack of clear and transparent information and requirements. This information deficiency is noted by the 'Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications'. Efforts to clarify requirements are underway at the federal level as well as in some provinces. In order to proceed with regulatory harmonization, it is critical to understand where differences lie and rationales underpinning differing requirements. An information shortage is a significant barrier to progress on addressing this institutional challenge.

In addition to requiring sufficient resources for data collection, stakeholder engagement is also required to ensure accurate and detailed information is collected. This will necessarily involve obtaining process and credential requirement information from hundreds of professional bodies and trade associations across Canada. There are many methods that may be applicable for approaching information collection, but the example from the European Union is of particular interest. Recall the EU's requirement that all member states complete a transparency and mutual evaluation exercise. A similar model could be followed in Canada where all provinces would be responsible for reporting regulatory standards for all professions and trades whose credentials are formally recognized by the province. This exercise would necessarily be time consuming, but if done properly, could yield large quantities of useful information. Not only is this a helpful exercise to ensure requirements are clear and transparent, but it will also provide the federal government with a broad perspective on similarities and differences in standards across Canada.

Based on some initial research, it is predicted that more similarities than differences exist across Canada. Provision of accurate information is a very important step toward achieving regulatory harmonization.

4) Accommodation Mechanism

The final challenge stems from opposition from provincial and professional bodies surrounding the assumption of universality and appeals to a lowest common denominator. It is important to remember that credential recognition processes are designed to ensure professional competence and protect public safety. There may be good reasons the requirements of one province may be more or less stringent compared to other provinces. It is important, therefore, to recognize legitimate difference as a key principle of this exercise.

The NWSEP offers a valuable example to follow, specifically the negative list principle that professions are required to harmonize regulations unless a legitimate reason may be submitted to the contrary. This negative list principle follows the intent of the Agreement of Internal Trade, while recognizing differences may be legitimate. Recognizing the need for a mechanism to accommodate legitimate differences is especially applicable when ten provinces and hundreds of regulated professions and trades seek common requirements. Construction of this mechanism would be an important priority for public servants working on this file. Again, clear information provision would allow those driving this policy the ability to address specific concerns rather than talk abstractly. Furthermore, decisions would be required regarding implementation strategies for harmonization efforts. As harmonization efforts would likely proceed in an organic fashion on a case-by-case basis, specific concerns may be addressed before a clearer picture of legitimate exceptions will emerge. This final challenge may be the most difficult to overcome but proceeding on a case-by-case basis will ensure regulatory rationales are

preserved and greater harmonization is achieved without the potential dangers to public safety posed by an over-generalized approach. This is not a simple process, but there are benefits to many policy areas should overcoming these challenges be deemed a priority.

Conclusion

Throughout this report, the complexity of addressing standards and regulatory harmonization has been a common theme. While it is clear that greater harmonization would have many related benefits, achieve principles of the Agreement on Internal Trade, and place Canada in a more competitive position, institutional challenges related to this issue make these benefits difficult to obtain. A policy window has been opened by the signing of the CETA. As professions in Canada and the federal government seek to negotiate mutual recognition agreements with countries in the European Union, interprovincial mobility barriers will be even more significant. Any efforts to mutually recognize the credentials of a non-Canadian jurisdiction are significantly complicated when intra-Canadian standards differ. It is clear, therefore, that governments across Canada have an incentive to tackle interprovincial regulatory harmonization to avoid significant conflict in the future.

This paper has outlined a central governance challenge that is closely related to credential recognition of foreign trained professionals in Canada. It has identified current actors involved in credential recognition across Canada and identified the opening of a policy window for this file. Through various jurisdictional scans, this paper has sought out similar experiences and best practices in order to put forward a series of recommendations on how the federal government can move forward on this challenge. This is not a magic bullet solution that will solve all challenges overnight, nor is it a comprehensive and detailed response plan that can immediately be

implemented. Instead, this paper offers a path forward on a very difficult file with the potential to yield several related benefits. This path seeks to navigate the significant obstacles facing this file. Arguably, the largest challenge is attracting significant leadership required to make this challenge a cross-jurisdictional policy priority. The price of inaction may be steep but action will require sensitive negotiation within complex interprovincial environment with no easy solutions. This paper is cautiously optimistic of the potential for success but recognizes significant barriers and institutional complacency that may see little progress achieved on resolving this challenge.

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