

# Implications of the agreement on internal trade for chiropractic regulatory bodies in Canada

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*The Agreement on Internal Trade ("AIT") is an agreement between the federal, provincial and territorial governments signed by the First Ministers on July 18, 1994. AIT is relevant to the mandate of chiropractic regulatory bodies to develop standards of admission to the profession, conduct examinations, register competent and ethical practitioners, and implement Quality Assurance Programs. The labour mobility chapter (Chapter 7) requires that qualified chiropractors have access to employment opportunities anywhere in the country. Chiropractic regulatory bodies must examine potential barriers to the interprovincial movement of chiropractors such as residency requirements, practices relating to licensing, certification or registration, and recognition of qualifications and reconciliation of standards. Barriers may be permitted in very limited circumstances which require the filing of "legitimate objectives." Discussions among regulatory bodies, associations and educational institutions are essential. The lead in coordination/information dissemination could be taken by a national body such as the Canadian Federation of Chiropractic Regulatory Boards. (JCCA 1996; 40(4):232-238)*

**KEY WORDS:** agreement on internal trade, chiropractic, regulatory bodies, labour mobility, examinations, registration, standards of practice, legitimate objectives.

*L'accord sur le commerce intérieur («l'ACI») est un accord entre les gouvernements fédéral, provincial et des territoires qui a été ratifié par les premiers ministres le 18 juillet 1994. Cet accord repose sur le mandat des organismes de réglementation en matière de chiropratique et il a pour objectif de développer les critères d'admission à la profession, de faire passer les examens, d'inscrire des praticiens qualifiés et respectant le code déontologique et de mettre sur pied des programmes d'assurance de la qualité. Le chapitre portant sur la mobilité de la main-d'oeuvre (chapitre 7) exige que les chiropraticiens qualifiés puissent pratiquer leur métier partout dans le pays. Les organismes de réglementation en matière de chiropratique doivent tenir compte des barrières éventuelles quant au déplacement interprovincial des chiropraticiens, soit les exigences relatives à l'internat, les autorisations quant à l'exercice de la chiropratique, la certification ou l'enregistrement, la reconnaissance des qualifications et la conciliation des normes. Un nombre très restreint de cas peut franchir les barrières douanières et un formulaire «d'objectifs légitimes» doit être rempli à cet effet. Il est nécessaire que les organismes de réglementation, les associations et les institutions d'enseignement s'entendent sur ce sujet. Un organisme national tel que la Canadian Federation of Chiropractic Regulatory Boards pourrait être en charge de la coordination et de la diffusion des renseignements. (JCCA 1996; 40(4):232-238)*

**MOTS CLÉS :** accord sur le commerce intérieur, chiropratique, organismes de réglementation, mobilité de la main-d'oeuvre, examens, enregistrement, normes de l'exercice de la chiropratique, objectifs légitimes.

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## I AGREEMENT ON INTERNAL TRADE (“AIT”)

### A Introduction

It is essential for chiropractic regulatory bodies in Canada to understand their respective obligations under AIT.<sup>1</sup> This article focusses on the role of chiropractic regulatory bodies. Recognition should be made of the fact that in most provinces one body carries out both regulatory and professional association functions (the exceptions are British Columbia, Ontario and Quebec). The purpose of this paper is to stimulate discussion about AIT, facilitate the sharing of information among the provinces and territories, and attempt to precipitate a coordinated approach to compliance with AIT by chiropractic regulatory bodies so that duplication of effort and resources is reduced or eliminated.

AIT is an agreement between the federal, provincial and territorial governments signed by the First Ministers on July 18, 1994. The aim of AIT is to eliminate or reduce to the extent possible, the barriers to the free movement of persons, goods, services and investments *within Canada*. AIT should be clearly distinguished from the North American Free Trade Agreement (“NAFTA”), which is an agreement between the governments of Canada, United States and Mexico. The goal of NAFTA is to reduce to the extent possible, the barriers to the free movement of goods and services *within North America*.

Chiropractic regulatory bodies are delegated authority to regulate the profession of chiropractic pursuant to statute, and accordingly, are bound by the terms of AIT. In Ontario, the College of Chiropractors of Ontario is delegated the authority to regulate the profession of chiropractic pursuant to the *Chiropractic Act, 1991*.<sup>2</sup> AIT fundamentally affects the way in which chiropractic regulatory bodies carry out their mandates, and in particular, their mandates to develop standards of admission to the profession, conduct examinations, register competent and ethical practitioners, and implement Quality Assurance Programs. The mandates for chiropractic regulatory bodies are outlined in statute. For example, the objects of the College of Chiropractors of Ontario (“CCO”) under the *Regulated Health Professions Act, 1991* include developing, establishing and maintaining standards of qualification, practice, knowledge, skill, and professional ethics and regulating the profession in the public interest.<sup>3</sup>

Each of the federal, provincial and territorial govern-

ments is responsible for implementing AIT and for ensuring that those covered by the agreement, take the necessary actions to comply with their obligations. Many of the provincial governments have begun the process of ensuring compliance with AIT by chiropractic regulatory bodies.

AIT contains a dispute mechanism pursuant to which governments agree to consult with each other regarding complaints that may arise as to the interpretation or application of the Labour Mobility Chapter. Any of the chiropractic regulatory bodies may be asked to examine their practices in response to a complaint.

### B The Labour Mobility Chapter (“Chapter 7”)

AIT consists of ten separate Chapters. The focus of the labour mobility chapter (“Chapter 7”), is the eventual elimination or reduction of barriers to labour mobility within Canada. Qualified workers in Canada are to have access to employment opportunities anywhere in the country.

Chapter 7 is of particular importance to chiropractic regulatory bodies. Chapter 7 requires the eventual elimination or reduction of barriers to the movement of chiropractors between and among provinces and territories. Qualified chiropractors should have access to employment opportunities anywhere in the country.

The Intergovernmental Labour Mobility Coordinating Group (“LMCG”) is responsible for overseeing implementation of Chapter 7 on behalf of the federal, provincial and territorial governments. LMCG consists of 13 representatives - the representatives of the Federal Government and Government of British Columbia are co-chairs.

### C Barriers to Interprovincial Movement of Workers

Chapter 7 targets three main areas where there may be barriers that prevent or limit the interprovincial movement of workers, namely:

- 1 residency requirements;
- 2 practices relating to licensing, certification or registration; and
- 3 recognition of qualifications and reconciliation of standards.

Chiropractic regulatory bodies which require as a condition of registration that an applicant reside in the province or territory will have to review their residency requirement

to determine whether applicants for registration from other provinces are unfairly disadvantaged.

Second, chiropractic regulatory bodies must ensure that all practices relating to licensing, certification or registration meet the following four conditions:

- 1 the measure should relate principally to *competence*;
- 2 the measure should be *published* or otherwise readily accessible;
- 3 the measure should *not result in unnecessary delays* in recognizing the occupational qualifications or workers from other provinces or territories; and
- 4 *fees and costs* for membership, licensing, examinations and other services imposed on out-of-province workers *may not be more burdensome* than those imposed on workers from within the province (except for actual cost differentials).

Third, chiropractic regulatory bodies must implement four steps in order to comply with the obligation to recognize qualifications and reconcile standards, namely:

- 1 *Conduct an Initial Assessment* of the occupational qualifications and standards of out-of-province practitioners to determine their similarities and differences;
- 2 *Reconcile Standards* if there are differences; this would involve a process of identifying and discussing the differences between each province to see if reconciliation is possible; this would not involve **harmonization** of entry requirements by provinces raising or lowering their own qualifications and standards;
- 3 *Recognize Qualifications* i.e. if the qualifications are the same or can be reconciled, mutual recognition should be agreed upon, in which case an out-of-province practitioner would be licensed, certified or registered simply by demonstrating a similar status in his or her own province; and
- 4 *Implement Accommodation Mechanisms* i.e. if differences cannot be reconciled, accommodations should be made to give appropriate recognition of the person's competencies; for example, special upgrading programs which specifically address the different standards could be offered.

A significant complicating factor in recognizing qualifications and reconciling standards for chiropractors across the country is that there are differences in governing legis-

lation and scopes of practice.

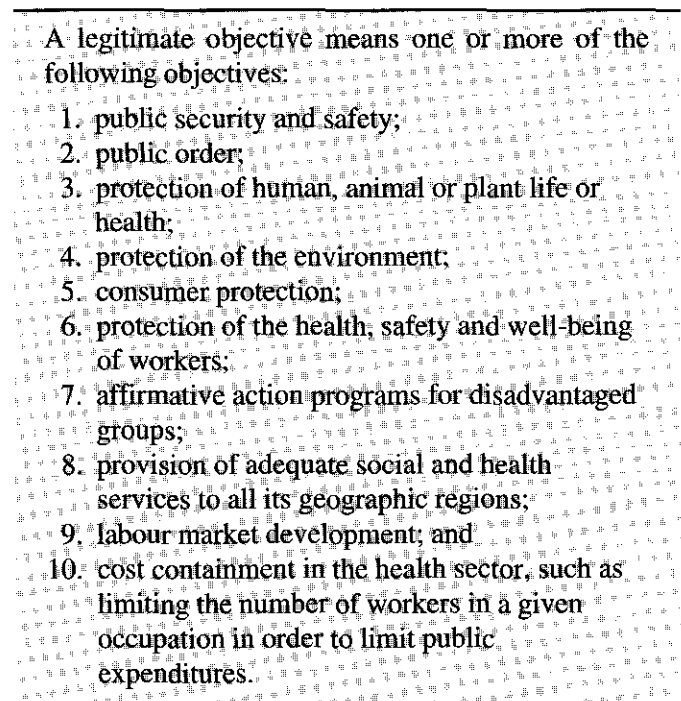
#### D Legitimate Objectives Provisions

Chapter 7 permits a deviation from the general principle of achieving labour mobility *if* the measure meets four conditions, namely:

- 1 the purpose of the measure is to *achieve a legitimate objective* (See Figure 1);
- 2 the measure does *not* operate to *impair unduly* the access of workers who meet the legitimate objective;
- 3 the measure is *not more mobility-restrictive than necessary* to achieve the legitimate objective; and
- 4 the measure does *not create a disguised restriction* to mobility.

Chiropractic regulatory bodies may be able to continue to maintain barriers to the movement of chiropractors into their province, if the above conditions are met. The caution is that it is the responsibility of individual provincial/territorial governments and not the chiropractic regulatory bodies, to determine whether any non-conforming measure should be maintained on the basis of the legitimate objective provisions.

**Figure 1**  
**Legitimate objectives**



## II SUMMARY CHART OF SIGNIFICANT EVENTS RELATING TO AIT AND CORRESPONDING TIME LINES

Included in the chart below are some of the very preliminary steps which have been taken by CCO in relation to AIT. Recognition should be made of the fact that the parties to AIT, i.e. the federal and provincial governments, may not be consistent in their respective efforts and timeliness in ensuring compliance by the chiropractic regulatory body within their respective jurisdictions.

DATE	EVENT
July 18, 1994	The First Ministers, representing the federal, provincial and territorial governments, sign AIT which is based on the operating principle that governments should ensure free movement of persons, goods, services and investments across the country.
Early 1995	LMCG is established to supervise the implementation of a workplan to implement the labour mobility provisions of AIT.
July 1, 1995	AIT comes into force. Persons have access to the dispute settlement procedure so chiropractic regulatory bodies may be called upon to examine their practices if a complaint is brought against a particular practice, relating for example to examinations or registration.
April 17, 1996	The Canadian Chiropractic Examining Board ("CCEB") writes to CCO expressing concerns about the increasing number of chiropractors exiting chiropractic colleges and suggesting a meeting of the Presidents and Registrars of the chiropractic regulatory colleges to discuss "manpower concerns" in addition to the Labour Mobility Chapter of AIT.
May 6, 1996	CCO writes to CCEB recommending a coordinated effort in the collection and dissemination of information, and in the efforts to ensure compliance by the provinces and territories. The Canadian Federation of Chiropractic Regulatory Boards ("CFCRB"), Council on Chiropractic Education (Canada) ("CCE (Canada)") and Canadian Chiropractic Association ("CCA") are copied with the correspondence about a possible national meeting. CCO expresses interest in knowing whether or not CFRB intends to take a leading role.
May 17, 1996	CCO receives a suggestion from CCEB that CCEB conduct national clinical competency examinations, in part because Chapter 7 of AIT requires provincial examinations to follow clearly defined protocols of development and administration.
June 1996	Chiropractic regulatory bodies begin to receive correspondence from their respective provincial governments inviting them to comply with Chapter 7 and requesting an examination of regulations, policies and practices. The final version of Guidelines <sup>4</sup> for meeting the obligations of Chapter 7 is distributed. A summary of survey results relating to chiropractic is distributed to assist provincial/territorial bodies in examining their practices and assessing how they recognize the qualifications of workers from other provinces and territories.

<b>July 1, 1996</b>	<p>The Provincial/territorial governments begin to seek compliance with Chapter 7 by non-governmental bodies that exercise authority delegated by law, including chiropractic regulatory bodies.</p> <p>Compliance with the first two obligations of AIT relating to residency requirements and licensing practices are sought as soon as possible.</p> <p>Compliance with the third obligation calling for the recognition of qualifications and reconciliation of occupational standards is to be sought "in a timely manner."</p>
<b>October 19, 1996</b>	<p>CFCRB adopts a motion to take a leading role in the Canadian chiropractic response to AIT.</p>
<b>Within a "reasonable time frame"</b>	<p>Chiropractic regulatory bodies must review the Guidelines<sup>4</sup> and other documentation received from their respective governments with the aim of identifying any barriers to the mobility of chiropractors in Canada.</p> <p>In the event there are barriers to the movement of chiropractors into the province/territory, the regulatory body must decide to either:</p> <ol style="list-style-type: none"> <li>1 take steps to remove the barrier, such as seeking an amendment to the appropriate regulations, changing the appropriate policies or implementing different practices; or</li> <li>2 attempt to preserve the barrier as a "permissible measure" on the grounds that the barrier meets "legitimate objectives" as defined in AIT. This will involve the chiropractic regulatory body notifying its provincial/territorial government of any non-conforming measures that it would like to preserve because they meet "legitimate objectives."</li> </ol>
<b>On an on-going basis</b>	<p>The progress achieved by chiropractic regulatory bodies will be monitored and assessed by labour mobility coordinators. The parties to AIT will be looking for reasonable signs of progress and effort.</p>
<b>On an on-going basis</b>	<p>Annual reports on the operation of Chapter 7 will be prepared, which will describe activities undertaken within each profession, including chiropractic, towards achieving recognition of qualifications and reconciliation of standards.</p>
<b>On an on-going basis</b>	<p>The parties to AIT will decide what, if any, of the measures identified by chiropractic regulatory bodies as "permissible measures" meet the test of serving "legitimate objectives".</p>
<b>Within a "reasonable time frame"</b>	<p>The provincial/territorial governments will adopt and maintain measures to ensure compliance by regulatory bodies where the government has been unable to secure voluntary compliance.</p>
<b>Eventually?</b>	<p>Compliance with all obligations of AIT will be met i.e. all barriers to the movement of Labour within Canada will be eliminated, or appropriate legitimate objectives filed.</p>

**III TASKS OF CHIROPRACTIC REGULATORY BODIES RELATING TO AIT**

The Guidelines<sup>4</sup> clearly outline the tasks to be performed in order to ensure compliance with AIT and should be

carefully reviewed. What follows is a very brief synopsis:

- 1 Chiropractic Regulatory Bodies should review their governing regulations, policies and practices for the purpose of determining whether or not they contain any

unnecessary barriers to the mobility of chiropractors. The committees responsible for registration and examinations have much work to do in examining licensing, registration and certification practices;

- 2 If barriers to the mobility of chiropractors exist, the chiropractic regulatory body should determine the advisability of:
  - (a) seeking an appropriate legislative change;
  - (b) amending a policy;
  - (c) implementing new practices; or
  - (d) requesting the filing of a "legitimate objective";
- 3 Chiropractic regulatory bodies should consult with their respective labour mobility coordinators if they wish to maintain a practice on the basis of the "legitimate objective" provisions; and
- 4 Discussions and collaboration with other chiropractic regulatory bodies, associations and education institutions should occur to achieve the obligations to recognize qualifications of out-of-province members, and reconcile standards.

#### IV SURVEY OF CHIROPRACTIC PRACTICES

In 1995, chiropractic regulatory bodies in Canada were asked to complete a Survey of Practices by LMCG. The results were forwarded to the chiropractic regulatory bodies to assist them in examining practices and assessing how they recognize the qualifications of chiropractors from other provinces and territories. In Ontario, the results of the survey were included in correspondence dated June 26, 1996 from John C. Snobelen, Minister of Education and Training, and Jim Wilson, Minister of Health (communication). The chart outlined below (Figure 2) indicates that of all of the chiropractic regulatory bodies who responded to the survey, not one has a reciprocity agreement with another Canadian jurisdiction to recognize qualifications of their members without additional assessment, examination or training.

**Figure 2**  
**Section C: Recognition of Qualifications**

**Do you have reciprocity agreements with any other jurisdiction to recognize qualifications of their members of your profession without additional assessment, examination or training? (Q. C3)**

JURISDICTION	NFLD	PEI	NS	NB	QUE	ONT	MAN	SASK	ALTA	BC	NWT	YT
Chiropractor												
Newfoundland												
Prince Edward Island	No	No	No	No	No	No	No	No	No	No	No	No
Nova Scotia	No	No	No	No	No	No	No	No	No	No	No	No
New Brunswick												
Québec	No	No	No	No	No	No	No	No	No	No	No	No
Ontario	No	No	No	No	No	No	No	No	No	No	No	No
Manitoba	—	—	—	—	—	—	—	—	—	—	—	—
Saskatchewan	No	No	No	No	No	No	No	No	No	No	No	No
Alberta												
British Columbia	No	No	No	No	No	No	No	No	No	No	No	No
Yukon Territory	No	No	No	No	No	No	No	No	No	No	No	No
Legend: (blank) = survey not received * (—) = survey received but question not answered												

## V CONCERNS FROM REGISTRANTS WITH RESPECT TO THE NUMBERS OF CHIROPRACTORS APPLYING FOR REGISTRATION

Chiropractic regulatory bodies periodically receive concerns from registrants about the numbers of chiropractors applying for registration in their province, although in CCO's experience, these concerns have focussed on the number of new graduates coming to Ontario from the United States rather than other provinces. The fundamental issue which must be discussed is the following:

*Does the role of chiropractic regulatory bodies include attempting to limit the number of members of the profession in the province?*

In order to answer the above question in the affirmative, a public protection issue must be involved. The question of limiting the number of chiropractors in the province should be related to the responsibility of chiropractic regulatory bodies to address the qualifications, training, competency and ethical standards of potential registrants in the province.

By way of analogy, the Law Society of Upper Canada ("LSUC"), which is the regulatory body for lawyers in Ontario, recently debated the issue of limiting the number of lawyers in the province. An article in the April 15, 1996 edition of the Toronto Star indicated there were Benchers on both sides of the issue. Some were of the view that the LSUC has no role in limiting the number of lawyers in the province because "market forces will prevail" and therefore, in order to survive, lawyers have to be particularly adept, and the public benefits accordingly. Other Benchers were of the view that there are a number of possible public interest concerns including the following:

- 1 intense competition may mean "price wars" which would force lawyers to cut corners to turn a profit, or, alternatively, dream up needless services as "make-work projects"; and
- 2 the greater the number of lawyers, the greater the number of complaints and discipline proceedings which have to be dealt with by the LSUC.

The article also suggested that rather than limiting the number of new graduates who may practice, the LSUC could limit the number of lawyers by requiring lawyers

already in practice to pass periodic professional standards examinations.

Subsequently, convocation of the LSUC voted 34 to 3 against limiting the number of new lawyers entering the profession and instead strongly endorsed a motion to "vigorously pursue the enhancement of lawyer competence".<sup>5</sup>

Chiropractic regulatory bodies should very carefully scrutinize their respective legislative mandates to determine the appropriateness of limiting the number of otherwise competent and ethical chiropractors in their province/territory, particularly in light of the thrust of both AIT and NAFTA, which is to "free up" both provincial and national borders so that qualified, competent and ethical practitioners may practice in the jurisdiction of their choice without unnecessary restrictions or impediments.

## VI CONCLUSION

Much work must be done by chiropractic regulatory bodies to ensure compliance with AIT. Effective leadership by a national organization may avoid unnecessary duplication of effort and resources by individual chiropractic regulatory bodies, and simultaneously result in increased efficiency in information dissemination and the reconciliation of standards. This would require appropriate political will by individual chiropractic regulatory bodies to share information and coordinate efforts in response to their respective provincial/territorial governments' actions to ensure compliance with AIT.

## References

- 1 First Ministers. AIT. July 18, 1994.
- 2 Chiropractic Act 1991. S.O. 1991 c. 21.
- 3 Regulated Health Professions Act 1991. S.O. 1991 c. 18.
- 4 Forum of Labour Market Ministers, Labour Mobility Coordinating Group, Agreement on Internal Trade, Guidelines for meeting the obligations of the Labour Mobility Chapter.
- 5 The Law Society of Upper Canada, Benchers Bulletin, April 1996, Vol 4, No 7.