

AN ANALYSIS OF BILL 175:

AN ACT TO ENHANCE LABOUR MOBILITY BETWEEN ONTARIO AND OTHER CANADIAN PROVINCES AND TERRITORIES

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EXECUTIVE SUMMARY

In May, 2009, the Ontario Government introduced Bill 175: *An Act to enhance labour mobility between Ontario and other Canadian provinces and territories* (the *Labour Mobility Act* or the Act). The Act proposes to give formal legislative expression to a federal/provincial/territorial agreement on labour mobility that was negotiated under the auspices of the Agreement on Internal Trade (the AIT) that went into effect in August 2009.

The Bill imposes significant obligations on all Ontario regulatory authority in regard to the certification standards they apply to individuals seeking approval to practice regulated occupations in Ontario. These authorities include government ministries, municipalities, and a diverse array of non-governmental institutions such as the Colleges of Nurse, Social Workers, Teachers, Doctors, and Early Childhood Educators.

Under the Bill, these authorities may not require an individual to be resident in Ontario as a condition of being certified to work as a nurse, teacher, pipe fitter or other regulated occupation, and may also not require individuals certified elsewhere in Canada to undergo material additional training, experience, or examinations to be certified for the same occupation in Ontario. Regulatory authorities are also directed to reconcile any differences that exist between their standards and those of other jurisdictions.

Failure to comply with the requirements of the Bill or the provisions of the AIT agreement on labour mobility exposes municipalities; the colleges of teachers, nurses, early childhood educators, social workers, doctors; and other non-governmental regulatory authorities to monetary penalties as high as \$5 million for each incident.

The following provides an assessment of the key provisions of the Bill and the likely impact this legislation would have on occupational certification standards and the Ontario labour market. The essential conclusions of our assessment are summarized as follows:



- There is no demonstrable rationale or need for Bill 175 as virtually all significant labour mobility issues have been successfully addressed over recent years through inter-provincial cooperation and other voluntary initiatives such as the Red Seal program for skilled trades;
- Requiring regulators to recognize occupational certifications given in other provinces with more modest standards will create pressure for them to reduce their own standards to a lower common denominator. The requirement for regulatory authorities to harmonize their standards with those of other jurisdictions will add to this pressure;
- Bill 175 has and will continue to impose significant resource demands on Ontario Ministries and regulatory authorities that must now make informed judgements about the efficacy of occupational certification standards and practices in other provinces, and justify any higher standard requirements they wish to maintain and apply to all those seeking occupational certifications in Ontario;
- However, neither the provincial government nor non-governmental regulatory authorities have the capacity to monitor the licensing and certification practices of other jurisdictions. This is also problematic in light of the increasing role being played by private training and certification companies that may provide poor training or even fraudulent certifications;
- Under Bill 175, municipalities and regulatory authorities such as the Colleges of Nurses and the Association of Early Childhood Educators are exposed to monetary sanctions as high as \$5 million for each instance of non-compliance with either Bill 175 or the AIT Labour Mobility Agreement, or both. Moreover, the nature and extent of this liability may be expanded by the Premier or his Minister if they chooses to enter into new or amended agreements under the AIT;
- By prohibiting residency requirements as a condition for certification in Ontario while lowering the bar for certain certifications, Bill 175 will likely increase competition for jobs and employment in Ontario which in the context of relatively high unemployment will create pressure on wages and benefits;
- While certain exceptions to the requirements of Bill 175 are permitted, they may be challenged before private arbitral tribunals that operate in a manner that is neither transparent nor accountable, and that have previously accorded only very narrow scope for such reservations; and
- Bill 175 will do nothing to enhance the competence, skill, or integrity of Ontario tradespersons and professionals and is in fact likely to have the opposite effect. By ensuring certifications to those trained to a lower standard, Bill 175 will unnecessarily put at risk public safety, and the health and well being of Ontarians. The mobility scheme that would be established by the Bill is also

likely to undermine the quality of a myriad of services offered by teachers, health care professionals, accountants, taxi drivers, and other skilled workers and professionals.

Given the costs and risks, it is truly remarkable that Bill 175 is being advanced with little evidence that labour mobility is a problem in Canada. As most will know, we live in an open society in which people are free to live and work anywhere in the country. Moreover, inter-provincial trade and labour mobility are federal responsibilities and provincial measures that interfere with such trade and mobility are unconstitutional.

While Canadian residents are free to seek and take up employment wherever they can find it in Canada, they don't have the right to operate construction cranes or practice medicine unless they are qualified to do so. Because training and qualification standards are a provincial matter, they may vary from province to province, sometimes significantly.

Some provinces are strong adherents of deregulation and have consistently sought to lessen the role of government in this sphere and many others. Ontario, on the other hand, is generally considered to be a strict regulator, often setting the highest Canadian standards.

While provincial regulatory differences have from time to time required certain tradespersons and professionals to establish their credentials when seeking to work or practice in a new jurisdiction, there is no evidence that labour mobility is a significant problem in Canada. In fact, several federal provincial initiatives over the past several years have successfully resolved most of the unwarranted impediments to labour mobility that did once exist.

Rather than represent a response to a demonstrable and significant problem, the labour mobility provisions of the AIT which Bill 175 seeks to implement, reflect an ideological commitment by the Harper Government to reduce the role of government in regulating the economy. In its Throne Speech (November 19, 2008) the federal government committed to working with the provinces "to remove barriers to internal trade, investment and labour mobility by 2010." The Conservative election platform (October 7, 2008) went further by stating that a Harper government "will work to eliminate barriers that restrict or impair trade, investment or labour mobility between provinces and territories by 2010 . . . We hope to see further progress, but are prepared to intervene by exercising federal authority if barriers to trade, investment and mobility remain by 2010."

In other words, the Conservative government is so committed to this agenda that it is prepared to test the limits of federal constitutional powers by imposing 'free trade' rules on provinces that refuse to go along. Given his ideological commitment to privatization and de-regulation, it isn't surprising that the Prime Minister has made its internal trade and mobility agenda a key priority. What is more difficult to understand is why Ontario appears to so keen to give effect to this federal agenda.

It is also important to note that Bill 175 represents the first instance of Ontario taking the step of giving statutory expression to an agreement on internal trade, in this case its labour mobility

provisions. By doing so, the province purports to transform what until now has been only a political commitment to the federal government and other provinces into a binding matter of provincial law. Moreover, under Bill 175, financial penalties for non-compliance may be imposed on provincial regulatory bodies, including municipalities, the colleges of nurses, teachers, social workers and physicians and surgeons and other professional licensing groups.

Furthermore, under the Bill, penalties may be meted out where the regulatory body is found to be in breach not only of the requirements of the Act, but also of the labour mobility provisions of the AIT. In other words, Bill 175 authorizes the imposition of financial sanctions on provincial regulatory bodies where they are found to have failed to comply with an interprovincial agreement, which itself has no legislative status in Ontario. Moreover, there is also nothing to preclude the Premier or his Ministers from altering their political arrangements with the federal government and other provinces from time to time as they see fit.

In sum: Bill 175 may be primarily regarded as an instrument for labour market deregulation that will increase competition for scarce Ontario employment or vocational opportunities while gradually reducing the qualifications of the individuals who entitled to apply for or take up such occupations.

These truly remarkable and unprecedented developments under Ontario law also raise serious constitutional questions which warrant further review but are not assessed here. Rather, this assessment describes the key features of Bill 175 and provides an estimate of the likely impact these will have on occupational standards, the institutions that administer those standards, Ontario labour markets, and the interests of patients, clients, consumers and the general public.