



Ministry of Jobs, Tourism and Innovation
BRIEFING NOTE FOR MINISTER

Ref #: 68815

FOR INFORMATION

Date: July 31, 2012

Title: Trade, Investment and Labour Mobility Agreement (TILMA) Dispute with Alberta

Issue: Alberta has called for a dispute resolution panel under the Trade, Investment and Labour Mobility Agreement in an attempt to compel British Columbia to register an Alberta social worker with a history of legal and ethical breaches.

Background:

The British Columbia College of Social Workers refused to register an Alberta social worker based on the applicant's ethical and moral character. Alberta claims that British Columbia's refusal is contrary to its obligations under the TILMA.

The dispute resolution panel hearing is set for August 17, 2012. In advance of the hearing, Alberta will submit a Statement of Claim (by August 3, 2012), which British Columbia will respond to in its Statement of Defence (by August 10, 2012).

The Ministry of Jobs, Tourism and Innovation is leading the Province's defence and is working with the Ministry of Health, the Ministry of Children and Family Development, the Ministry of Justice and Attorney General, and external counsel to defend British Columbia's right to reject an applicant with unacceptable character. Government Communications and Public Engagement are involved to manage communications-related aspects of the dispute.

Discussion:

The social worker's history includes:

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The British Columbia College of Social Workers determined, at each stage of the three-stage registration and appeals process, that this social worker: i) did not provide sufficient evidence of rehabilitation; ii) did not meet the good character requirements of registrants; and iii) committed numerous actions which could be the subject of a citation and found to be professional misconduct, up to and including his attempts to mislead the British Columbia Board of Registration of Social Workers in 2008.

The panel is tasked with deciding whether British Columbia has the authority to maintain its ethical and public protection standards if a worker is registered in Alberta.

Critics of the TILMA and New West Partnership have frequently alleged that the agreements will lead to a “downward spiral of standards”, thereby harming consumers, health and the environment.

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The provision of public safety and consumer protection are high priorities for British Columbia, and all efforts will be made to defend the rights and obligations of regulators to protect the public. This is not inconsistent with the fact that the Province is a strong supporter of trade and the free movement of labour.

An overview of the Alberta and British Columbia positions in this dispute is attached.

Attachment

Contact: Michael Nielsen
Telephone: 250 953-4632

Approvals			
Dir: RM	ED: DW	ADM:	DM:

NR

From: Renault, Shannon JTST:EX
Sent: Wednesday, January 16, 2013 9:06 AM
To: Robson, Victoria J HLTH:EX
Subject: NR

Victoria,

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- A September 2012 dispute panel decision under the Trade, Investment and Labour Mobility Agreement (TILMA) regarding social workers reaffirmed the right of regulatory bodies to individually assess interprovincial applicants for evidence of good character. The panel decision involved an individual who was certified by the Alberta College of Social Workers (ACSW) and subsequently denied certification by the BC College of Social Workers (BCCSW) on the basis that he failed to provide satisfactory evidence of good character. This decision was based on an extensive individual assessment conducted by the BCCSW. The TILMA dispute panel ruled that individual assessment to

establish evidence of good character is consistent with a Party's obligations under TILMA

Shannon Renault

Manager, Labour Market Portfolio

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Harrison, Joy S JTST:EX

From: Carnaghan, Matthew JTST:EX
Sent: Wednesday, January 16, 2013 9:37 AM
To: Best, Kelly JTST:EX
Subject: RE: TILMA dispute decision re: Social Workers
Attachments: 94628 BN s22 Panel Ruling.docx; 68815 - BN s22 - Info for Ministers of HLTH and CFD (2).docx; IN_Social Worker Dispute_July 6 2012.docx

Yes, we have lots on this issue. See attached. Call if you have any questions.

From: Best, Kelly JTST:EX
Sent: Tuesday, January 15, 2013 8:46 AM
To: Carnaghan, Matthew JTST:EX
Subject: TILMA dispute decision re: Social Workers

Hi Matt,

Do you have a summary or BN on the TILMA dispute decision re: Social Workers on good character? I'm looking for some reliable background info on this.

Thanks,

Kelly Best

Senior Advisor, Labour Market Portfolio

Labour Mobility Coordinator, B.C.

Ministry of Jobs, Tourism and Skills Training

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MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING
AND MINISTER RESPONSIBLE FOR LABOUR
INFORMATION NOTE

Cliff #: 94628

Date: October 16, 2012

PREPARED FOR: Honourable Pat Bell, Minister

ISSUE: Ruling of panel in internal trade dispute with Alberta – labour mobility (social worker).

BACKGROUND: s22 is an Alberta licensed social worker who had been denied licensure in British Columbia because of a history of serious ethical breaches. In July 2012, Alberta called a dispute resolution panel against British Columbia under the Trade, Investment and Labour Mobility Agreement (TILMA) to challenge British Columbia's decision to deny licensure to s22

On September 28, 2012, the panel issued a majority ruling in favour of British Columbia. The 10 days allowed for participants to request reconsideration or clarification of the ruling has expired without comment. The panel's ruling is now final.

DISCUSSION: The majority of panellists accepted British Columbia's argument that the TILMA does not prohibit occupational and professional regulators from assessing and rejecting an applicant on the basis of character deficiencies, and rejected Alberta's argument to the contrary. Although one of the three panellists issued a dissenting opinion favouring Alberta, the majority ruling stands and British Columbia is not obliged to license s22

The panel also pointed out that broad discretion for regulators to assess and reject applicants for reasons of character risks undermining the principle of labour mobility. It recommended that the parties work together to establish limitations on this discretion.

As the New West Partnership Trade Agreement (NWPTA) has expanded the TILMA to include Saskatchewan, that province will need to be included in work to implement the panel's recommendations.

NEXT STEPS: Trade officials are beginning discussions with Alberta and Saskatchewan to clarify what limitations should be placed on a regulator's discretion, as per the panel's recommendations. Parties will also use this as an opportunity to discuss any improvements that could be made to the dispute resolution process, in light of their experience in the dispute just concluded.

The TILMA requires that the s22 ruling be made publicly available. Parties have agreed to post the ruling on the TILMA website.

Officials plan to respond to any public inquiries by noting that the panel has recognized that the TILMA does not prevent regulatory authorities from considering evidence of a worker's character, and that British Columbia may continue to maintain a high degree of protection of the public.

ATTACHMENTS: Panel Report, TILMA Dispute 2012

Prepared by: Matthew Carnaghan, Senior Advisor, Internal Trade
Telephone: (250) 952-0645

Reviewed by				
Dir:	ED:	ADM:	DM:	MIN:

ADVICE TO MINISTER

CONFIDENTIAL ISSUES NOTE

Ministry of Jobs, Tourism and Innovation
Date: July 5, 2012
Minister Responsible: Hon. Pat Bell

Social Worker Dispute

ADVICE AND RECOMMENDED RESPONSE:

- The provision of public safety and consumer protection are high priorities for this government.
- We are concerned about Alberta's actions and will vigorously defend the rights and obligations of regulators to protect the public.
- The Province is a strong supporter of trade and the free movement of labour and it is our hope that we can resolve this disagreement quickly.
- We have not seen Alberta's submission to the panel and cannot speculate on why they believe British Columbia is in breach of our trade obligations.

KEY FACTS:

The province of Alberta has requested a dispute resolution panel hearing under the Trade, Investment and Labour Mobility Agreement (TILMA) in an attempt to force British Columbia to register an Alberta social worker who has a history of serious legal and ethical breaches in an occupation that serves a variety of vulnerable people. Based on this individual's history, the BC College of Social Workers and two appeal boards have refused to register him. Alberta claims this violates the TILMA.

In February 2011 Alberta requested formal consultations on this matter under the dispute resolution mechanism of the TILMA.

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The panel must hold a hearing by August 30, 2012, and present its recommendations by October 15. British Columbia has engaged legal counsel and prepared a draft submission for the panel. This may need to be revised once we receive Alberta's submission.

In effect, the panel will have to decide whether British Columbia has the authority to maintain its ethical and public protection standards if such standards impede a particular individual's labour mobility.

Alberta will have to persuade the panel that British Columbia must accept all applicants if they are registered for that occupation in Alberta, regardless of their criminal or ethical past. If the panel were to agree with Alberta's argument, this would create a serious precedent that would weaken the ability of all British Columbia, Alberta and Saskatchewan regulators, in all occupations, to protect the public.

The BC College of Social Workers is planning to advise occupational regulators across Canada of this development and encourage their Alberta counterparts to urge their government to reconsider this dispute. Once this dispute becomes widely known among regulators it will almost certainly become public.

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Communications

Lara Perzoff/Scott Colbourne

250 387-

Contact:

2799

Program Area Contact:

File Created:

June 14, 2012

File Updated:

July 6, 2012

File Location:

Harrison, Joy S JTST:EX

From: Lindsay Hopper [Lindsay.Hopper@gov.ab.ca]
Sent: Thursday, October 18, 2012 2:32 PM
To: Renaud.Laroche@MESS.GOUV.QC.CA; vanessa.pond@hrsdc-rhdcc.gc.ca; Julie.Adam@MESS.GOUV.QC.CA; alain.therriault@hrsdc-rhdcc.gc.ca; alexander.macLellan@hrsdc-rhdcc.gc.ca; tracyaz@gov.ns.ca; amber.mcnair@ontario.ca; bev.davis@hrsdc-rhdcc.gc.ca; Jean-Francois.Biron@MESS.GOUV.QC.CA; bgauld@ait-aci.ca; carys.storey@gnb.ca; dntaylor@gov.pe.ca; david.pal@ontario.ca; davin.budreau@hrsdc-rhdcc.gc.ca; deb_bain@gov.nt.ca; evlyn.fortier@hrsdc-rhdcc.gc.ca; grant.barry@gnb.ca; jeanmanning@gov.nl.ca; jpitts@gov.pe.ca; jeremy.fortier@ontario.ca; Jeremy Shepherd; karyn_hicks@gov.nt.ca; Kathleen Morrow; Best, Kelly JTST:EX; Laurent.mcmanuschampagne@hrsdc-rhdcc.gc.ca; lisa.bukoski@gov.mb.ca; mark.roe@hrsdc-rhdcc.gc.ca; mary.didowycz@gov.sk.ca; maryrose.metcalf@gov.yk.ca; natalie.wellsch@gov.sk.ca; nicole.davignon@hrsdc-rhdcc.gc.ca; pcaron@ait-aci.ca; pauldinn@gov.nl.ca; rosyanne.amourdon@hrsdc-rhdcc.gc.ca; roula.athanasiou@hrsdc-rhdcc.gc.ca; Stacey.quinn@gov.mb.ca
Subject: TILMA Dispute related to good standing/good character
Follow Up Flag: Follow up
Flag Status: Completed

Hi everyone,

Further to the call this afternoon, the TILMA (Trade, Investment, and Labour Mobility Agreement) panel decision related to a regulatory authority's right to undertake an individual assessment to establish good character was posted publicly this week. You can find the panel report at the following link: http://www.tilma.ca/dispute_panel.asp. As mentioned on our call, some of the highlights of the decision will be discussed at the face-to-face meeting in PEI.

As a side note, because this dispute was between Alberta and BC, it was filed under TILMA as this agreement is between Alberta and BC; however, the New West Partnership Trade Agreement (NWPTA) is an agreement that in effect extends TILMA to Saskatchewan. I mention this as most people are more familiar with TILMA but among our three provinces we now mostly refer to NWPTA. For anyone interested, here is a link to the NWPTA website where you will also find the agreement itself: http://www.newwestpartnershiptrade.ca/the_agreement.asp

Thanks,
Lindsay

Lindsay Hopper
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From: Harrison, Joy S JTST:EX
Sent: Wednesday, September 4, 2013 1:16 PM
To: Musgrave, Robert MIT:EX
Subject:

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the 2012 AB/BC TILMA dispute re Social Worker Good Character which Matt was involved with. Kelly Best wasn't involved with the TILMA dispute but thought that there may have been subsequent Internal Trade discussions on this topic between AB/SK/BC.

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Joy

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Pages 13 through 17 redacted for the following reasons:

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