



CANADIAN COUNSEL'S COMMENTS

Streamlined licensure



Guest columnist Julie Maciura is the Managing Partner of Steinecke Maciura LeBlanc, a law firm in Toronto, Canada, focusing solely on professional regulation.

The new language that has been proposed for the ASWB Model Social Work Practice Act, which would allow “licensure by endorsement” of a licensed applicant from another U.S. jurisdiction, aligns well with Canada’s labour mobility provisions.

The proposed language reads as follows:

Section 308. Qualifications for Licensure by Endorsement.

(a) To obtain a license by endorsement at the equivalent designation and subject to Article IV of this Act, an applicant currently licensed as a social worker in another jurisdiction must provide evidence satisfactory to the Board, subject to Article III, Section 311, that the applicant:

- (1) Has submitted a written application and paid the fee as specified by the Board; and**
- (2) Has presented to the Board proof of an active social work license in good standing.**

This new provision is designed to reduce barriers in occupational licensing for social workers in the U.S. who wish to practise in other U.S. jurisdictions. Establishing

labour mobility for social work practice has in the past few years been identified primarily as a U.S. issue because the Canada Free Trade Agreement (“CFTA”, previously the Agreement on Internal Trade) established labour mobility for regulated workers in Canada in 2009. (While the CFTA was signed in 1995, the amendments to Chapter 7 were endorsed in 2009 in order to help resolve labour mobility challenges in Canada within regulated occupations.)

It seems that by adopting the concept of “licensure by endorsement,” U.S. jurisdictions will be positioned to make substantial progress toward practice mobility. Licensure by endorsement allows the jurisdictions evaluating the applications of social workers licensed in another U.S. jurisdiction to play a more active role than simply accepting the transfer of the license. Instead, the accepting jurisdiction will “endorse” the requesting applicant’s license status if the applicant has submitted a written application, has paid the fee, and has presented proof of an active social work license in good standing (subject to Article IV of the Model Social Work Practice Act, i.e., if the applicant has been previously disciplined by the home jurisdiction, or has been convicted of a felony, etc., that fact can be

relied upon by the endorsing jurisdiction as a reason to not endorse the license).

The “licensure by endorsement” concept of labour mobility closely mirrors what has been in place in Canada since 1995. Pursuant to the CFTA (the principles of which have been codified in the applicable legislation of the Canadian provinces and territories), regulatory bodies in Canada have an obligation to recognize workers who are licensed or registered in another Canadian jurisdiction. This “certificate-to-certificate” principle means that a regulated worker who is currently registered or licensed in one Canadian jurisdiction is entitled to work anywhere in Canada without having to undergo significant additional training, experience, examinations or assessments (subject to some exceptions described below).

The “accepting” jurisdiction is still permitted to require the applicant to: pay application fees; obtain insurance; post bonds; provide evidence of good character¹; provide evidence of good standing²; provide a criminal record check; demonstrate language proficiency in English or French (if not previously assessed by the originating jurisdiction); and demonstrate knowledge of the relevant laws in the accepting jurisdiction (jurisprudence test).

It cannot be a requirement that the worker must actually reside in the accepting jurisdiction.

For those regulated occupations where there are significant differences from one jurisdiction to another in occupational standards, provincial or territorial governments are legally authorized

to approve an exception to the “certificate-to-certificate” principle, provided the exception is justified by a “legitimate objective”. A legitimate objective must be justified on the basis of such things as public security and safety, protection of human health, or consumer protection, etc. Such exceptions can only be applied if there is strong supporting evidence of an actual material deficiency in skills, knowledge, or ability required to perform the scope of practice of an occupation and any additional material requirements imposed must not be more restrictive to labour mobility than necessary and must not create a disguised barrier to labour mobility.

It should be noted that while this mechanism to establish exceptions based on legitimate objectives technically exists, most provincial governments have not granted any new exceptions since 2008 and 2009. Ontario, for example, only has five exceptions to full labour mobility and all were granted in 2009. The most common exception relates to lawyers certified in Quebec—because Quebec has a civil law regime which differs from the common law regime in the rest of Canada. The second most common exception relates to social workers certified in Alberta and Saskatchewan, both of which jurisdictions allow for a two-year education program (as compared to a four-year degree in other Canadian jurisdictions).

When the labour mobility provisions first came into force in Canada there was great fear and trepidation amongst regulators that this would amount to a “race to the bottom”, and that regulated workers would shop around to

become licensed or registered in the “easiest” jurisdiction and then rely on the labour mobility provisions to become regulated in the province or territory where they really wanted to work. While there has been some evidence of that happening, it has been in relatively small numbers.

The labour mobility requirements also apply to those holding a certificate/license in Canada who were originally grand-parented (e.g., were working in their profession at the time that the profession became regulated and did not have to meet the new, usually more stringent, registration/licensure criteria) and those who were originally internationally educated and then became registered in a Canadian jurisdiction. The CFTA requires that those workers be treated like any other Canadian worker in respect of labour mobility. (This is because it is assumed that no Canadian jurisdiction has significantly lower standards than another [or there would be a formal “legitimate objective” exception in place] and in most cases any real deficiencies in that worker’s credentials would have likely revealed themselves to the first Canadian licensing authority.)

While each jurisdiction in Canada has the authority to set occupational standards as they see fit, the labour mobility provisions in the CFTA do encourage regulatory bodies to reconcile differences in occupational standards and to adopt as much as possible common occupational standards. Those provisions, as well as the concerns about consumer/client safety created by the movement of differently credentialed workers from one province to another, has led to a

concerted effort by Canadian regulators to implement consistency in their certification requirements. While Canada still has a way to go until there is consistency across professions and trades in respect of entry-to-practise qualifications, the will to achieve that consistency has certainly increased since the introduction of the CFTA in 1995 and the Chapter 7 amendments in 2009.

1. Good character is generally interpreted as referring to the applicant's past history and is not confined to matters that have gone to a full discipline hearing.

2. Good standing is generally interpreted as referring to the applicant's current license status, such as whether they are suspended for non-payment of fees, etc.