

# HRPA's Policy on mutual recognition of the CHRP designation

December 4, 2009

## HRPA's Policy on Mutual Recognition

HRPA will recognize any individual who has been granted the CHRP designation in any other province as qualified for certification by HRP A without additional material training, experience, examinations or assessments.

In essence, HRP A will abide by requirements of the Agreement on Internal Trade (AIT) even where, strictly speaking, the Agreement on Internal Trade does not apply (i.e., the other provincial association is not a regulatory authority as defined by the AIT).

Specifically, HRP A will not conduct what are referred to as 'case-by-case' assessments.

Consistent with the Agreement on Internal Trade, HRP A will recognize as qualified for certification those individuals who have been certified in other provinces by grandfathering or other equivalency process.

It is also HRP A's policy to recognize any individual who has been granted the CHRP designation in any other province as qualified for certification by HRP A without additional material training, experience, examinations or assessments even when this recognition is not reciprocated by the other province

Despite the above, should the standards that are applied in granting the designation in another province fall below those deemed by HRP A necessary to protect the public interest, this recognition will not apply.

## Commentary on the policy

On May 15, 2009, the Ontario legislature introduced Bill 175, the *Ontario Labour Mobility Act, 2009*. This proposed legislation mentions HRP A specifically in Table 1 of the Act under the 'Non-governmental regulatory authorities - Private Acts' rubric. When enacted, the *Ontario Labour Mobility Act, 2009*, will apply to HRP A. Under the *Ontario Labour Mobility Act, 2009*, HRP A will be appointed a monitor to whom HRP A must report to on matter of compliance with the Agreement on Internal Trade. The *Ontario Labour Mobility Act, 2009*, provides for substantial fines for non-compliance with the Act. It is important, therefore, that HRP A be compliant with the *Ontario Labour Mobility Act, 2009*.

HRP A policy on the recognition of the CHRP designation of individuals certified in other jurisdictions is intended to live by the spirit and the letter of the Agreement on Internal Trade (AIT) and to comply with

the requirements of the proposed *Ontario Labour Mobility Act, 2009*. It is also important for HRPAs to abide by its enabling legislation, the *Human Resources Professionals Association of Ontario Act, 1990*.

HRPA's Mutual Recognition policy is intended to ensure compliance with the *Ontario Labour Mobility Act, 2009* and the *Human Resources Professionals Association of Ontario Act, 1990*.

### **The Agreement in Internal Trade (AIT)**

To understand HRPAs' policy on the recognition of the qualifications for the CHRP designation of individuals from other jurisdictions, it is important to understand the Agreement on Internal Trade. The Agreement on Internal Trade (AIT) is an agreement that was struck between the Governments of Canada, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, the Northwest Territories and Yukon. These are the 'parties' to the Agreement. The Agreement on Internal Trade was first signed in 1995; since then there have been eight 'protocols of amendment.'

It is the objective of the Agreement on Internal Trade is to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market.

The Agreement on Internal Trade (AIT) defines mutual recognition as follows: "Mutual recognition means the acceptance by a Party of a person, good, service or investment that conforms with an equivalent standard or standards-related measure of another Party without modification, testing, certification, re-naming or undergoing any other duplicative conformity assessment procedure." In the context of professional certification, mutual recognition means the acceptance of an individual qualified in one jurisdiction as being qualified in another without additional material training, experience, examinations or assessments.

The AIT does not change or diminish the provincial powers of regulation:

*"Nothing in this Agreement alters the legislative or other authority of Parliament or of the provincial legislatures or of the Government of Canada or of the provincial governments or the rights of any of them with respect to the exercise of their legislative or other authorities under the Constitution of Canada."*

Article 102 of the Agreement on Internal Trade states:

1. Each Party is responsible for compliance with this Agreement:
  - (a) by its departments, ministries and similar agencies of government;
  - (b) by its regional, local, district or other forms of municipal government, where provided by this Agreement; and
  - (c) by its other governmental bodies and by non-governmental bodies that exercise authority delegated by law, where provided by this Agreement.

Annex 703.1 defines "non-governmental bodies that exercise authority delegated by law:"

"non-governmental bodies that exercise authority delegated by law means any organization, institution, corporation or association to whom authority has been delegated by provincial or federal statute to set or implement measures related to:

- the establishment of occupational standards or requirements for licensing, certification or registration;
- the assessment of the qualifications of workers against established occupational standards or requirements for licensing, certification or registration; or
- the official recognition that an individual meets established occupational standards or requirements for licensing, certification or registration.

By virtue of the *Human Resources Professionals Association of Ontario Act, 1990*, the HRPA is a "non-governmental body that exercise authority delegated by law." Indeed, the *Human Resources Professionals Association of Ontario Act, 1990*, delegated to HRPA all three of the authorities referred to above.

The Agreement on Internal Trade has always applied to HRPA. The reason why this may appear to be new is that until now the Government focused its implementation efforts on 'Group A' professional regulatory bodies which did not include HRPA. In the last few years, there has been a renewed commitment to labour mobility and a renewed commitment to implementing the Agreement on Internal Trade. The *Ontario Labour Mobility Act, 2009*, applies to all regulatory authorities as defined by the Agreement on Internal Trade.

If there was any doubt as to whether HRPA is subject to the AIT, the recently introduced Bill 175, the *Ontario Labour Mobility Act, 2009*, removes any doubt. Bill 175 specifically mentions HRPA in Table 1 of the Act under the 'Non-governmental regulatory authorities - Private Acts' rubric.

### **Application to provincial associations that are not regulatory authorities**

Among the jurisdictions covered by the Agreement on Internal Trade, only Ontario's HRPA and Quebec's ORHRI are "non-governmental body that exercise authority delegated by law." Thus, under the Agreement on Internal Trade, only Ontario and Quebec are required to recognize each other's certification. The Agreement on Internal Trade defines "certified individuals" as follows: "an individual is certified if a regulatory authority issues a certificate/registration/licence to practice the occupation and/or use a title." The Agreement on Internal Trade defines "regulatory authority" as follows: "means a department, ministry or similar agency of Government of a Party or a non-governmental body that exercises authority delegated by law."

HRPA in Ontario, and l'ORHRI in Quebec, are "regulatory authorities;" the other provincial HR associations are not. Under the meaning and for the purposes of the Agreement on Internal Trade, individuals granted the CHRP by other provincial associations, other than Quebec, are not 'certified

workers' because the body that issued their certificate was not a "regulatory authority." The implication here is that under the AIT and the proposed *Ontario Labour Mobility Act, 1990*, HRPAs would not be required to recognize the CHRPs granted by other provincial associations other than Quebec's because these provincial associations are not regulatory authorities.

Despite the fact that, under the Agreement on Internal Trade, HRPAs would not be required to recognize the certification granted by other provincial associations other than Quebec, HRPAs has chosen to do so. In essence, for the purposes of mutual recognition, HRPAs will treat all provinces as regulatory authorities even when they are not under the definition of the AIT.

### **Common misunderstandings as to what mutual recognition means**

Although the above seems straightforward there are many misunderstandings with respect to what mutual recognition actually means. Mutual recognition means that no additional material training, experience, examinations or assessments will be required of individuals certified in other provinces wishing to be certified in another province. Mutual recognition does not mean that individuals who have been granted the right to use a professional designation in one province can use the designation in another province without being a member of that second provincial association and meeting other allowable certification requirements set by this second province.

The common use of the phrase "national designation" only adds to the confusion. One common understanding of the phrase 'national designation' is that an individual who has been granted the designation in one province has been deemed by that fact to have been granted the designation in all provinces. This interpretation is incorrect. This interpretation runs counter to the fundamental organization of professional regulation in Canada—i.e., that it is a matter of provincial jurisdiction. It is also counter to specific provisions in the *Human Resources Professionals Association of Ontario Act, 1990*.

First, what is being recognized are the *qualifications* of individuals not the *designation* itself. In other words, certification in one jurisdiction does not mean that one is 'automatically' certified in another jurisdiction even if the designation is mutually recognized in those jurisdictions. For example, an individual who is certified in another province cannot claim that he or she is certified in Ontario unless this individual also meets certain requirements set out by HRPAs. This individual must in addition:

- apply for membership with HRPAs including the payment of dues
- provide evidence of good character
- agree to abide by HRPAs's Rules of professional conduct
- provide evidence of good standing in jurisdiction of origin
- provide evidence of recent practice
- provide proof of professional liability insurance if they intend to offer their services as independent practitioners

Mutual recognition means that HRP A will not require any additional material training, experience, examinations or assessments. Within the framework of the AIT, the above requirements are considered to be administrative and application requirements rather than material requirements. An individual who does not meet these requirements will not have the right to use the C H R P designation or the letters C H R P after their name in Ontario.

**Allowable certification requirements**

The Agreement on Internal Trade defines those certification requirements that are allowable and those that are prohibited for individuals that have been certified in other jurisdictions.

<b>Allowable Certification requirements under the Agreement on Internal Trade</b>	<b>Prohibited Certification requirements under the Agreement on Internal Trade</b>
<ul style="list-style-type: none"> <li>• Application and administrative requirements</li> <li>• Evidence of good character and criminal background checks</li> <li>• Evidence of good standing</li> <li>• Language requirements</li> <li>• Recent practice</li> </ul>	<ul style="list-style-type: none"> <li>• Residency requirements</li> <li>• Material additional requirements</li> </ul>

**Having the designation in more than one jurisdiction**

This is another area where there is confusion. It is commonly believed that an individual can only hold the C H R P designation in one jurisdiction at a time. This is simply not true.

There are two aspects that need to be made clear: (1) mutual recognition applies to more than to the context of transfers; and (2) under the AIT, residency requirements are forbidden.

The term ‘transfer’ is usually used when an individual certified in one jurisdiction moves to another jurisdiction and wishes to be certified in this second jurisdiction. The term ‘transfer’ is used when there is a change in residence from one jurisdiction to another. Mutual recognition also applies to the situation where an individual certified in one jurisdiction wishes to be certified in another jurisdiction even when this individual does not plan to change residence. Mutual recognition also applies in the situation where individuals wish to be certified in two or more jurisdictions simultaneously.

On the other hand, within the framework of the AIT, residency requirements are forbidden. HRP A cannot deny membership (registration) to qualified applicants based on residency and HRP A cannot stop a member of HRP A from pursuing certification based on residency.

Our Act states:

*7.—(1) Every member of the Association who has satisfied the criteria set out in the by-laws of the Association may use the designation "Certified Human Resources Professional" and may use after his or her name the initials "C.H.R.P.".*

In the application of the Agreement of Internal Trade, having met these administrative and application requirements, as per section 7(1) of the *Human Resources Professionals Association of Ontario Act, 1990*, individuals certified in other provinces would be entitled to use the designation Certified Human Resources Professional and to use the initials C.H.R.P. after their name in Ontario even though they might not meet the usual or current requirements for certification in Ontario.

The fact that the AIT forbids residency requirements means that HRPA cannot stop qualified individuals who reside in other provinces from applying for, or achieving, certification in Ontario.

It should be noted in this context that it is HRPA's policy not to solicit individuals who reside in other provinces to become members of HRPA or to pursue certification by HRPA. Notwithstanding, HRPA cannot deny certification to qualified individuals based on their residency. As well, to comply with the *Human Resources Professionals Association of Ontario Act, 1990*, HRPA must insist that all individuals who wish to use the CHRP designation in Ontario be members of HRPA. Our Act does not allow any other interpretation:

*7(2) Any person in Ontario who, not being a registered member of the Association, takes or uses the designation of "Certified Human Resources Professional" or its abbreviation "CHRP" alone or in combination with any other words, name, title or description or implies, suggests or holds out that the person is a certified human resources professional is guilty of an offence.*

The prohibition on residency requirements means that qualified individuals can be certified in more than one province if they comply with the additional permitted requirements of each of the provinces.

Once an individual previously certified in another jurisdiction is certified by HRPA, they are subject to the same recertification requirements as individuals who were originally certified by HRPA. This means that Individuals who wish to maintain their certification with HRPA must meet HRPA's recertification requirement--they must file a completed recertification log with HRPA. Of course, because of the harmonization in recertification requirements, activities that count towards recertification in another province will count in Ontario. Nonetheless, this does not remove the requirement to recertify with HRPA. It could be that the same recertification log would be submitted to more than one provincial association.

Consistent with the prohibition on residency requirements, HRPA will not deny registration with or certification by HRPA based on residency. Also, HRPA has no basis in law to deny certification to any person registered with HRPA who meets the requirements for certification as established by the HRPA Board.

### **Prohibited practices: Case-by-case assessment**

One of the practices prohibited by the Agreement on Internal Trade is case-by-case analysis. Case-by-case assessment is when a jurisdiction reviews the qualifications of individuals certified in other jurisdictions against their own certification criteria.

Case-by-case assessment may result in individuals certified in one jurisdiction being denied certification in another. Generally, case-by-case assessment is prohibited under the Agreement on Internal Trade.

According to the Agreement on Internal Trade, governments can maintain additional certification requirements for workers already certified in another Canadian jurisdiction where it can be demonstrated:

- (a) The purpose of the measure is to achieve a legitimate objective;
- (b) The measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and
- (c) The measure does not create a disguised restriction to labour mobility.

HRPA will not conduct case-by-case assessments of individuals already certified in another Canadian jurisdiction. This means that HRPA will not deny certification to individuals who have been certified in other provinces, and who have met the application and administrative requirements, even if these individuals would not have qualified for certification under HRPA's current criteria.

### **Regulatory authorities maintain the right to set occupational standards**

Although the *Ontario Labour Mobility Act, 2009*, is clearly aimed at removing inter-provincial barriers to labour mobility, the government recognizes the authority of regulators to establish occupational standards which they consider appropriate to protect the public.

Consistent with the obligations of every government under the AIT, however, regulatory authorities would be required to consider the impact on labour mobility when establishing new occupational standards or amending existing ones.

### **Protection of the Public**

A primary role of regulatory authorities is to protect the public from unqualified and incompetent individuals. The government is committed to full labour mobility in all regulated occupations, but recognizes that the need to protect the public may, in some limited circumstances, require Ontario to maintain some additional material training, experience, examination or assessment measures. In these circumstances, the government will support an exception under the legitimate objective provision of the AIT.

It is still HRPA's responsibility to see that the standards are appropriate to protect the public in Ontario.