

Explanatory Summary

Amending O.Reg.8/06 to Comply with the *Ontario Labour Mobility Act, 2009*

Context

The Ministry of Tourism and Culture (MTC) is proposing amendments to O.Reg.8/06 to implement the amendments made to the *Ontario Heritage Act* (OHA) in order to comply with the *Ontario Labour Mobility Act, 2009* (OLMA).

The OLMA established a Labour Mobility Code to support Ontario's commitment to inter-provincial/territorial labour mobility consistent with the Agreement on Internal Trade (AIT). Ontario's Labour Mobility Code aims to make it easier for people to become certified to practise specific occupations in the province if they are already certified by another province/territory that has also signed the AIT (only Nunavut has not signed the AIT).

For MTC, the Labour Mobility Code must be integrated into its legislative and regulatory framework for archaeological fieldworkers. MTC issues licences for archaeological fieldwork in Ontario under the OHA and O.Reg.8/06. The OLMA amended section 48 of the OHA to create the labour mobility framework for archaeological fieldworkers seeking an Ontario licence. As a result of these amendments (see section 48(8.2) of the amended OHA), effective December 15, 2009, MTC has the authority to issue a licence to applicants who demonstrate that:

- they hold an “authorizing certificate” for archaeological fieldwork that was granted by an “out-of-province regulatory authority” (both as defined in the OLMA – see below for definitions)
- their “authorizing certificate” is in good standing and allows the same type of fieldwork that they wish to do in Ontario
- their past conduct provides no reason to believe that their fieldwork will not comply with the OHA and its regulations
- their fieldwork would be consistent with the conservation, protection and preservation of Ontario's heritage
- they comply with any other criteria set out in regulation that do not contravene the OLMA

Proposed Amendments to O.Reg.8/06 and Implementation

To bring MTC into full compliance with the OLMA and the AIT, MTC is now proposing to amend O.Reg.8/06 which sets out the detailed requirements to obtain an archaeological licence.

The proposed amendments recognize that the OLMA's Labour Mobility Code prevents Ontario's “regulatory authorities”, including the Minister of Tourism and Culture, from imposing additional material requirements on people who are already certified in other provinces/territories (e.g., further training, experience, examinations or assessments).

To comply with this Code, the proposed amendments would ensure that out-of-province applicants who demonstrate that they meet the criteria in the amended OHA (as listed above) would be not be subject to the regulation's requirements related to education, work experience, reference reports and, for avocational licences, mentoring agreements.

Out-of-province applicants would be subject to other licensing requirements such as those which set out the "scope" of each licence class (i.e., the requirements that are not related to education, work experience, etc.). This would allow MTC to ensure that successful out-of-province applicants receive an Ontario licence only for the activities for which their home province or territory certifies them to practice.

The proposed amendment would apply to MTC's three classes of land-based archaeological licences – professional, applied research, and avocational. These licences meet the OLMA definition of an "authorizing certificate" that allows the holder to practice an occupation because they allow the licensee to conduct fieldwork on any project within the scope of their licence class for the duration of their licence (usually three years).

Ontario licences for marine archaeology are site-specific. MTC's current analysis has concluded that they do not meet the OLMA definition of "authorizing certificate". As a result, the labour mobility provisions of the OLMA do not apply to marine archaeology. All applicants, whether from Ontario or from out-of-province are required to apply for marine archaeology licences using the same, existing process.

Archaeologists from other provinces/territories would be able to apply for a land-based Ontario licence under the new labour mobility provisions using MTC's proposed new application process for out-of-province applicants. Applicants would have to demonstrate that they meet the applicable OHA requirements in their application and MTC would review their application. Out-of-province applicants will always also have the option of applying under Ontario's existing licensing process.

After reviewing the regulatory frameworks of other provinces/territories, Ontario may be the only jurisdiction whose framework currently meets the OLMA definition of "authorizing certificate" with respect to the licensing of archaeologists. This means that it is likely that no out-of-province applicant would be eligible for the proposed new, OLMA-consistent process in Ontario. Conversely, there would be no reciprocal, streamlined process under which archaeologists licensed in Ontario could apply in other provinces/territories. This likely means that the current situation in each province/territory would continue to apply and licence or permit applications would continue to follow the standard process of that jurisdiction.

Regardless, in all cases, MTC would review any application submitted under the proposed new labour mobility provisions of O.Reg. 8/06. As stated above, applicants from other provinces/territories will always also have the option of applying under Ontario's existing licensing process for archaeologists.

If approved, the amendment would take effect January 1, 2011.

For more information, please consult the attached Qs and As.

Ontario Labour Mobility Act, 2009 (OLMA) Definitions:

OLMA, Section 2(1) provides that:

“authorizing certificate”, in relation to an occupation, means,

- (a) a certificate, licence, registration, or other form of official recognition, granted by a regulatory authority to an individual, which attests to the individual being qualified to practise the occupation and authorizes the individual to practise the occupation, use a title or designation relating to the occupation, or both, or
- (b) a certificate, licence, registration, or other form of official recognition, granted by a regulatory authority to an individual, which attests to the individual being qualified to practise the occupation but does not authorize the practice of the occupation or the use of a title or designation relating to the occupation, if the occupation and the regulatory authority granting the certificate, licence, registration or other form of official recognition respecting the occupation are prescribed for the purpose of this clause;

The same section defines an “out-of-province regulatory authority” as:

a regulatory authority that is authorized to certify individuals in an occupation under an Act of Canada or of a province or territory of Canada that is a party to the Agreement on Internal Trade, other than Ontario