

# Information and Advice to Regulators on Alternatives to Canadian Experience



**FAIRNESS** COMMISSIONER

COMMISSAIRE À **L'ÉQUITÉ**

**OFFICE OF THE FAIRNESS COMMISSIONER**  
**BUREAU DU COMMISSAIRE À L'ÉQUITÉ**

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## Background

Recent amendments have been made to the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* (FARPACTA or the Act), and to Ontario Regulation 621/22 (the regulation) made under the Act, that now limit the ability of regulated professions (regulators) to retain Canadian experience requirements (CERs).

Please note that these amendments do not apply to the regulated health colleges that are governed by the CER provisions found in the *Regulated Health Professions Act, 1991* and section 4 of Ontario Regulation 508/22 made under that statute. However, health regulators may equally benefit from reviewing the best practices section of this document.

In general terms, section 10.2 of FARPACTA prohibits a regulator from retaining a CER unless the Minister of Labour, Immigration, Training and Skills Development (MLITSD) grants an exemption for public health and safety reasons or where the regulator has established a viable alternative to its CER based on the criteria outlined in section 1.2(1)1. of the regulation.

Historically, some regulators have determined that experiential requirements should be incorporated into their registration practices. These may take the form of a set period of work experience or experiential training, sometimes described as an internship or articling placement. In some cases, regulators have required that all, or a portion, of this work experience or experiential training be obtained in a Canadian work setting.

Over the years, a variety of stakeholders -- particularly in the human rights, government, and immigration spheres -- have argued that CERs materially prevent internationally trained applicants (ITAs) from obtaining registration and employment and that they are, *prima facie*, discriminatory in nature.

These experiential requirements often represent the “last mile” in a long and costly registration journey for ITAs. Canadian experience is not always easy to come by and some candidates simply give up because they cannot obtain it.

As mentioned previously, section 10.2 of FARPACTA is the key statutory provision that addresses CERs. Subsection 10.2(1) specifies that:

*A regulated profession shall not require as a qualification for registration that a person's experience be Canadian experience unless an exemption from the prohibition is granted by the Minister for the purposes of public health and safety in accordance with the regulations.*

The section, in turn, gave regulators until December 3, 2023, to obtain such an exemption, failing which any existing Canadian experience requirement would become void.

Section 10.2 (1.1) of the Act further allows a regulator to maintain a CER if it also adopts an alternative:

*A regulated profession may accept Canadian experience in satisfaction of a qualification for registration only if it also accepts alternatives to Canadian experience that meet the criteria prescribed by the regulations.*

Sub-section 1.2 (1) of the regulation spells out these criteria as follows:

*A regulated profession may accept Canadian experience in satisfaction of a qualification for registration only if it also accepts alternatives to Canadian experience that meet the following criteria:*

1. *The alternative must involve international work experience or experiential training that enables a person to acquire competencies that,*
  - i. are clearly defined by the regulated profession,*
  - ii. are necessary to the practice of the regulated profession,*
  - iii. are the same as or substantially similar to those that would be acquired through Canadian experience that satisfies the qualification requirement,*
  - iv. would qualify the person for the same type of membership in the regulated profession that would be granted to an applicant whose Canadian experience satisfies the qualification requirement, and*
  - v. can be obtained in at least one country other than Canada.*
2. *The work experience or experiential training may be obtained in any jurisdiction outside of Canada in which a person can acquire the competencies described in paragraph 1.*
3. *If the alternative includes an individual assessment, the assessment must be available to applicants with work experience or experiential training obtained in any jurisdiction outside of Canada, and must be available to such applicants,*
  - i. on a regular basis, and*
  - ii. for a reasonable fee, if any fee is charged.*

Sub-section 1.2 (2) goes on to indicate that, for greater certainty, subparagraph 3 ii of subsection (1) does not authorize any regulated profession or other body to charge fees for an assessment.

Sub-section 1.2 (3) then stipulates that a description of an alternative, including the requirements for obtaining the work experience or experiential training, the competencies to be acquired through the work experience or experiential training, and any individual assessment, must be published on a publicly accessible website maintained by the regulated profession.

## **Information and Advice to Regulators**

Pursuant to its authority under section 13(3)(e) of FARPACTA, the Office of the Fairness Commissioner (OFC) is pleased to provide information and advice to regulated professions to enable them to better understand how to comply with the requirements of the Act as identified above.

The OFC believes that, where a regulator has adopted a viable alternative and, thereby, retained its CER, the alternative -- whether it involves work experience or experiential training - - must be bona fide in nature, reasonable, and proportionate to the desired registration outcome. In addition, the regulator must evaluate both Canadian and international experience in a fair and transparent fashion.

In addition, regulators should always be open to reviewing the continuing need for an experiential requirement, especially where substitute practices can offer a more streamlined and equitable registration process that does not materially impact public health and safety. In the past, the OFC has written about alternative routes for candidates to obtain licensure.<sup>1 2</sup>

To their credit, regulators have increasingly embraced new approaches to assess the academic and experiential credentials of candidates. These often include new pathways for applicants to acquire and / or demonstrate entry-to-practice competencies.

A focus on entry-to-practice competencies, as demonstrated through competency-based assessments (CBAs) and work experience gained in other jurisdictions, has become the option of choice for many regulated professions.

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<sup>1</sup> Academic Requirements and Acceptable Alternatives: Challenges and Opportunities for the Regulated Professions in Ontario, OFC, 2013,

<sup>2</sup> Immigrant Professionals and Alternative Routes to Licensing: Policy Implications for Regulators and Government, J. Augustin, Canadian Public Policy, 2015.

This has included both regulators that have recently decided to eliminate their CERs ( and those that apply CBAs as viable alternatives to their CERs .

Other regulated professions also permit ITAs to claim exemptions from the need to acquire Canadian or Ontario-based experience. These processes are typically based on the ability of candidates to demonstrate that they possess equivalent international experience with or without the need to complete supplementary local training.

At minimum, to establish a credible alternative to its CER, a regulator must enable ITAs to exhibit the desired competencies through modalities other than obtaining work experience in Canada. For example, should a regulator value an applicant's ability to apply the *Ontario Building Code* (the code), it could, for example, either require hands-on experience in working with the code or require that an applicant:

- describe a project where the individual successfully applied a building code from another jurisdiction and explain how they might have proceeded differently if the project had been carried out in Ontario; or
- demonstrate experience applying a building code in another jurisdiction and take an online module on the code.

The OFC also encourages regulators to identify options for applicants to address competency gaps identified through the assessment process. These may include alternatives such as taking a course or completing an assignment focused on a discrete competency area.

With this context in mind, this document will describe how the OFC will assess whether a CER alternative complies with the criteria set out in Section 10.2 of the Act and section 1.2 of the regulation. It will also outline some associated best practices that regulators could pursue to create better outcomes for ITAs.

### ***How the OFC Will Ascertain whether a CER Alternative Meets the Criteria Outlined in the Act and its Regulation***

As noted previously, the regulation sets out a series of criteria that regulators must fulfill to establish an acceptable alternative that would, in turn, allow them to retain their CERs.

As a first step, the regulator must structure an alternative that involves international work experience or experiential training that enables a person to acquire a clearly defined set of competencies. These competencies must be necessary for the practice of the regulated

profession and be the same as or substantially similar to those that would be acquired through Canadian experience that satisfies the qualification requirement.

The regulator must also establish that this approach entitles the applicant to the same type of membership as someone qualified through Canadian experience and show that the competencies can be obtained in at least one country other than Canada.

The OFC will assess whether the regulator has fulfilled these criteria by reviewing the following program attributes:

*Recognition of international experience:*

The OFC will confirm whether the alternative allows applicants to use work experience or experiential training obtained outside Canada to fulfill any identified experiential requirements.

*Competency-based:*

The OFC will seek information on the competencies to be acquired or assessed through the CER alternative. These competencies should be clearly articulated, measurable (where practicable), and rationally connected to the practice of the profession. The alternative should not require that ITAs demonstrate competencies over and above those required of domestically trained applicants.

*Necessary to the practice of the regulated profession:*

The OFC would evaluate the regulator's rationale for determining that its assessment criteria are necessary for individuals to practice in the regulated profession. This analysis should be grounded on those skills that a professional would undertake on a routine basis and not in more esoteric situations.

*Comparability of criteria to those specified for CER options:*

The OFC will compare the outcomes that the regulator has articulated for its CER program to those criteria identified for the alternative. The office will examine the issue of comparability broadly to ensure that the criteria are not disproportionate, onerous or cannot reasonably be fulfilled through international experience.

*Provision of comparable licensure:*

To assess this issue, the OFC will validate that applicants who completed an alternative to a CER are entitled to the same type of membership or class of licensure as someone qualified through Canadian experience. Typically, the OFC would review the regulator's program documentation and decisions of its registration committee to secure this information.

*Whether an applicant can obtain competencies / experience from another country:*

According to the regulation, if the alternative includes an individual assessment, that assessment must be available to applicants with work experience or experiential training obtained in any jurisdiction outside of Canada. Furthermore, it must be accessible to such individuals on a regular basis, and for a reasonable fee, if any fee is charged.

The OFC will first assess whether the regulator has confirmed that the required competencies, coupled with the associated work experience or experiential training, can be obtained in at least one country other than Canada.

*Availability of the alternative to applicants:*

The OFC will then review the ease with which applicants can access the assessment process. In general terms, the assessment opportunities should be available frequently such that they do not impose barriers to registration. Some regulators have moved to a gold standard which enables continuous access and / or the ability of the applicant to complete the assessment process in their home country.

When assessing whether the fees that a regulator charges are reasonable, the OFC will consider the following factors:

- The rationale that the regulator has advanced for setting the fee amounts.
- How the fees relate to the cost of providing the services.
- How the fees charged compare with those administered by regulators that are similarly situated.
- Whether the quantum of fees pose a potential hardship for qualified applicants and whether the regulator has adopted a fee waiver policy to reduce or eliminate these fees in appropriate circumstances.

*Whether the information about the alternative is published on a publicly accessible website maintained by the regulated profession:*

Finally, the regulation stipulates that the regulator must publish a description of an alternative, including the requirements for obtaining the work experience or experiential training, the competencies to be acquired through the work experience or experiential training, and any individual assessment, on a publicly accessible website maintained by the regulated profession.

While these requirements are straightforward, it would be important for the regulator to position its CER alternative in the context of the entire registration process. In addition, the regulator should identify the considerations (i.e., the pros and cons) that applicants may wish to weigh in determining whether to assess the CER or alternative stream.

The OFC will also look to regulators to maintain statistics that identify the number of ITAs who select either the CER or viable alternative assessment pathway, the success rates associated with each option and changes to these trends over time. These success rates should include the percentage of applicants who complete the CER or alternative and are subsequently registered.

Regulators may also wish to focus on evaluating the longer-term performance of applicants within the profession who have come through both processes. (e.g., through such metrics as complaints and disciplinary actions).

### ***Considerations Specific to Exemption Processes***

As previously discussed, some regulators have instituted procedures through which an applicant may seek an exemption from a CER. By design, those systems provide applicants with an alternative route to persuade regulators that their international experience should be recognized.

There are, however, some subtle differences between an exemption process and other types of alternatives to a CER which are important to highlight. While an exemption process is narrowly focused on a decision to exempt or not exempt, other types of alternatives may be designed to achieve broader objectives, including enabling applicants to obtain the competencies that they currently lack (e.g., through self-paced learning or obtaining micro-credentials).

Where an exemption process is available, the OFC will consider the following attributes to determine it provides a credible pathway to licensure:



- Whether a regulator publicizes and promotes the exemption process as a viable option.
- Whether the regulator minimizes procedural barriers for seeking an exemption so that each application can be evaluated on its own merits.
- Whether the exemption criteria are reasonable in nature and take into account the broad competencies, experience and skill sets of applicants.
- Whether the exemption success rate is reasonable in the circumstances and compares favourably with that achieved by similarly situated regulators.
- Whether applicants who do not meet the bar for an exemption are provided with alternatives, such as an abridgement that lessen the burden of the CER.
- The training and cultural competencies of the decision makers.
- Whether the regulator periodically monitors the success of the program and makes necessary adjustments based on client feedback and other considerations.

***Best Practices Related to CER Alternatives:***

In setting out a list of best practices, it should be noted that immigrants often arrive in Canada with high levels of education. In addition, many have already secured the right to practice their trade or profession in their home jurisdictions and have accumulated relevant international experience. On this basis, it is important for regulators to recognize the knowledge and skills of these professionals, while supporting them to integrate effectively into Ontario workplace environments.

The various alternative pathways for ITAs can be placed into seven broad categories:

1. competency-based assessments;
2. other approaches to assess knowledge and skills (e.g., through knowledge-based and / or clinical examinations);
3. self-paced learning (e.g., online courses that often focus on the Canadian work context);

4. bridging programs and / or the availability of micro-credential courses to fill experiential gaps;
5. mutual recognition agreements;
6. provisional or conditional licensing; and
7. post-registration quality assurance and / or continuing professional development programs.

Based on the content of the regulation, some of the approaches noted above would not, on their own, satisfy the criteria for a CER alternative. For example, provisional licensing, while a best practice, does not meet the criterion of granting ITAs full licensure, comparable to those who complete a CER. Nevertheless, when used in combination with other approaches, these pathways can play an important role in opening doors for these individuals.

What follows below are some best practices that regulators can deploy, either individually or collectively, to develop and enhance their CER alternatives. Most of these examples can also be applied to designing an effective exemption process.

*Competency-based assessments:*

- Frame experiential requirements and criteria in terms of competencies and profession-related knowledge and skills, rather than focusing on specific settings in which the experience must be obtained. Allow for a combination of experience (e.g., applying an international standard or code) and knowledge (of a Canadian standard or code).
- Avoid posing questions to applicants which only a Canadian domiciled candidate could successfully respond.
- Review governing legislation, regulations, by-laws and policies to identify any barriers or restrictions that may hinder flexibility, inclusivity or the ability to devise creative alternatives.
- Identify opportunities to amend or update regulations or by-laws to accommodate new and more inclusive assessment criteria. Seek amendments or clarifications if necessary to provide legal authority for the use of competency-based assessments, ITA integration programs or other alternatives.

- Develop standardized assessments or examinations that test the practical skills and theoretical knowledge required for the profession.
- Work with other Ontario regulators, national bodies and post-secondary institutions that have adopted competency-based models, to explore lessons learned and opportunities to develop common processes, increase scale and lower costs.
- Use external evaluation or employment verification services to assess or validate foreign experience.

*Flexible experiential recognition practices:*

- Exhibit flexibility and recognize the variety of ways that individuals from different backgrounds develop professional knowledge and skills.
  - Explore how professions and trades are practiced and regulated outside of Canada to identify similarities and / or evaluate licensing requirements in foreign jurisdictions for their alignment with Ontario requirements. Use findings to make necessary adjustments to registration requirements or practices.
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- Establish mechanisms for recognizing and accepting international certifications or qualifications by, for example:
    - establishing reciprocal recognition agreements with other countries, thereby facilitating the acceptance of professional qualifications across borders.
    - actively engaging with global partners, including other regulatory bodies and international organizations, to share best practices in recognizing foreign credentials.

*Setting ITAs up for success:*

- Given that competency-based self-assessment processes can require high level language skills to translate an ITA's past-experience into Ontario-based competencies, provide these candidates with an appropriate level of support to enable them to complete these assessments in a fair, timely and informed fashion.
- Working with partners, offer ITAs enhanced access to micro-credential courses, bridging programs and advanced-standing opportunities tailored to the scope of any missing competencies, to allow them to address gaps in a timely fashion.

- Create mentorship programs that pair internationally trained applicants with experienced practitioners to round out their understanding of the practice of the profession or trade in Ontario.
- Proactively engage with employer groups to educate them about the merits of competency-based assessments so that they do not unreasonably discount the skill sets of individuals who have selected this assessment route.

## **A Few Last Words**

Please note that the OFC has disseminated these best practices to assist regulators to enhance the effectiveness of their alternatives to CERs. As the advantages of competency-based assessment frameworks will be new to some regulators, it is important that any associated change management initiatives be implemented carefully and through a client-focused lens.

The OFC recognizes that the process of adopting appropriate assessment and licensing requirements can be complex. On this basis, we encourage regulators to reach out to their assigned OFC compliance analyst to obtain further information and advice, including identification of other regulators whose experience may be relevant to their issues.

It is the responsibility of regulators to ensure that they comply with the legislation. Please note that the contents of this document do not constitute legal advice, nor do they affect the OFC's advice-giving or enforcement discretion in any way.