

# Applying for an Exemption from the Prohibition against Retaining a Canadian Experience Requirement



**FAIRNESS** COMMISSIONER

COMMISSAIRE À **L'ÉQUITÉ**

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

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## Background and Legislative Context

The purpose of this guideline is for the Office of the Fairness Commissioner (OFC) to provide information and advice to regulators on the process for seeking an exemption from the prohibition against retaining a Canadian experience requirement.

On December 2, 2021, the Ontario government enacted the *Working for Workers Act, 2021*, which, among other things, made several targeted amendments to the [Fair Access to Regulated Professions and Compulsory Trades Act, 2006](#) (FARPACTA). These amendments apply to the non-health regulated professions and to Skilled Trades Ontario.

A number of these amendments relate to what has come to be known as the Canadian experience requirement. This type of provision typically requires that internationally trained applicants (ITIs) obtain Canadian work experience as a condition of registration. Requirements such as these can represent the “last mile” in the registration journeys of these candidates. Canadian experience is not always easy to come by and some candidates simply give up because they cannot obtain it.

Section 10.2 of FARPACTA is the key statutory provision. It spells out a prohibition against retaining a Canadian experience requirement unless the Minister grants an exemption. The relevant provisions follow:

- 10.2(1) 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.
- (2) A regulated profession may apply for an exemption referred to in subsection (1) by submitting appropriate supporting documentation and providing reasons that an exemption is necessary for the purposes of public health and safety.
- (3) An application referred to in subsection (2) shall include the information prescribed by the regulations, if any, and be submitted in accordance with the procedures prescribed by the regulations.
- (4) The Fairness Commissioner shall review an application for an exemption and make a recommendation to the Minister as to whether the exemption should be permitted.
- (5) The Minister shall determine whether to grant the exemption.
- (6) Subject to subsection (7), if a regulated profession has a requirement described in subsection (1) contrary to that subsection more than two years after the day section 5 of Schedule 3 to the *Working for Workers Act, 2021* comes into force, the requirement is deemed to be void on and after that day.
- (7) The Minister may grant a temporary exemption from the prohibition in subsection (1) during the period that the Minister is considering an application for exemption.

If a regulator proposes to retain a Canadian experience requirement for two years after the enactment of the legislation (i.e., by December 2, 2023) and does not obtain an exemption from the Minister for the purposes of public health and safety, that requirement will become void as of that date.

The new section 27.1 of FARPACTA is also relevant. It specifies that:

*If the Minister concludes that a regulation or by-law made by a regulated profession includes a Canadian experience requirement contrary to subsection 10.2(1), the Minister may make an order requiring the regulated profession to exercise any power or powers that it has to amend or revoke the regulation or by-law.*

Section 10.2(4) also stipulates that the Fairness Commissioner must first review a regulator's request for an exemption and then provide a recommendation to the Minister as to whether the exemption should be permitted. Given that this is a novel statutory scheme, the OFC considers it appropriate to provide information and advice to regulators on how to engage the exemptions process, should they decide to proceed in this fashion.

Before providing some insights on the exemptions process, it is also necessary to refer to several provisions contained in [Ontario Regulation 261/ 22](#) (the regulation) made under FARPACTA, which was enacted on April 4, 2022.

Under section 1 of the regulation, the term "Canadian experience" is defined to mean any work experience or experiential training obtained in Canada.

Section 3 of the regulation then outlines some key elements of the application process as follows:

- (1) An application for an exemption referred to in section 10.2 of the Act must be made to the Fairness Commissioner in the form required by the Fairness Commissioner, if any.
- (2) An application for an exemption referred to in section 10.2 of the Act must include the following information:
  1. The reasons the exemption is necessary for the purposes of public health and safety.
  2. A statement as to whether any body that regulates the same profession as the regulated profession in another Canadian province or territory has eliminated its requirement for Canadian experience as a qualification for registration.
  3. A summary of any other facts relevant to the application.
  4. A statement of the law and authorities relating to the application, if any.
  5. Any supporting documentation.
- (3) In reviewing a regulated profession's application for an exemption for the purpose of making a recommendation to the Minister, the Fairness Commissioner shall consider any information provided in the application and may consider any other relevant information.

## Before Filing an Exemption Request

As a first step in considering whether to file an exemption request, it would be useful for a regulator to reflect on whether it possesses a Canadian experience requirement as defined in the regulation. To respond to this question, the regulator could ask itself whether it requires that applicants demonstrate practical skills, engage in experiential learning that takes place in Canada or complete any period of registration-related work for a Canadian employer.

If the regulator concludes that its registration processes includes a Canadian experience requirement, it should carefully consider whether it still requires such a condition of registration or could substitute another modality for this provision (e.g., a training program that measures the necessary competencies to work in the profession or trade).

In undertaking this diagnostic work, the OFC believes that the following questions would form a useful part of the analysis:

- Why does the regulator need this particular set of requirements for entry to the profession or trade? What empirical evidence has the regulator gathered to support this proposition? Is the basis for making the original decision to impose a Canadian experience requirement still valid?
- Are these requirements necessary and relevant for the work to be performed? If so, what evidence or facts exist that would establish that proposition?
- If the regulator were to make changes to its current experiential training requirements, at what point would these no longer constitute a Canadian experience requirement?
- Where a regulator has established one or more alternatives through which ITIs can fulfill their experiential learning requirements to the profession or trade, would it now be possible to rely on them predominantly or exclusively?
- Could Canadian experiential goals be more equitably achieved once the candidate has been registered as, for example, part of the regulator's quality assurance and / or continuing education programs?
- Should a regulator decide to seek an exemption from the prohibition against a Canadian experience requirement, can it reasonably demonstrate that the exemption is necessary for the purpose of public health and safety?

Please note that the OFC has included these questions as examples only to assist regulators in developing and conducting their own analysis. It is the responsibility of regulators to ensure that they comply with the legislation. Please note that these examples do not constitute legal advice, nor do they affect the OFC's advice-giving or enforcement discretion in any way.

The OFC recognizes that this process can be challenging. On this basis, regulators are welcome to reach out to their assigned compliance analysts to obtain further information and advice on this analytical exercise.

## **Making an Exemption Request**

Section 3 of the regulation, which is extracted above, outlines the information that a regulator must provide to support its application request. There are essentially five elements, which involve articulating reasons for the exemption, identifying whether similarly situated regulators have been able to eliminate the requirement, providing a summary of the relevant facts, submitting a statement of law and authorities, and supplying any supporting documentation.

The OFC recognizes that the situation of each regulator is distinct and, therefore, that exemption applications will need to be customized. The OFC would ask, however, that any submissions be kept to a reasonable length. Regulators should send their exemption applications electronically to their assigned compliance analyst.

Once the regulator submits its exemption application, it will be reviewed by the relevant compliance analyst and other OFC staff. Following this review, the OFC may request that the regulator provide additional information or analysis either through an in-person meeting and/or in writing.

Should the Fairness Commissioner, as part of the application process, decide to consider relevant information other than that provided by the regulator, the Fairness Commissioner will ensure that any evidence or documentation obtained in this fashion is shared with the regulator for comment in order to preserve procedural fairness.

The Fairness Commissioner may also ask to meet with a regulator to obtain supplementary information regarding an exemption request.

The OFC aims to be able to make a recommendation to the Minister within eight weeks from the receipt of the application.

Please note this operational guideline may be subject to revision.

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BUREAU DU COMMISSAIRE À L'ÉQUITÉ

180 Dundas Street W., Suite 300, Toronto ON M7A 2S6  
180, rue Dundas O., Bureau 300, Toronto (Ontario) M7A 2S6

[ofc@ontario.ca](mailto:ofc@ontario.ca)  
[www.FairnessCommissioner.ca](http://www.FairnessCommissioner.ca)