

A Guide for Regulatory Authorities

Best Practice Checklist for Certifying Labour Mobility Applicants*

Developed initially by the Labour Mobility Coordinators under the Forum of Labour Market Ministers (FLMM) in the context of the labour mobility provisions of the Agreement on Internal Trade (AIT). The Canadian Free Trade Agreement (CFTA) which came into force on July 1, 2017 replaces the AIT. This checklist has been updated to reflect the minimal changes made to Chapter 7 (labour mobility) under the CFTA.

Each regulatory authority has established an application process in order to certify workers in its regulated occupation. The intent of this document is to outline guiding principles for requesting information, as part of this application process, from workers who are currently certified in another Canadian province or territory in order to certify them in a regulated occupation. The Principles and Best Practice Checklist is meant to identify and guide best practices for regulatory authorities.

Guiding Principles for Certifying Labour Mobility Applicants

1. Certificate-to-certificate recognition is the fundamental principle of labour mobility in Canada. Regulatory authorities recognize that due diligence is applied by other jurisdictions in Canada in certifying their workers to practice their occupations.
2. Information requested from a labour mobility applicant who is currently certified in another Canadian province or territory must only be asked to complete the registration certification and/or licensure process, not to reassess the applicant's competencies or abilities to practice his/her occupation.
3. The application process for labour mobility applicants should be transparent and processed promptly.
4. Regulatory authorities can ask labour mobility applicants to meet requirements to be registered, certified and/or licensed in their jurisdiction; however, these requirements must not be more burdensome than those required by first-time applicants from that jurisdiction. Material requirements for additional training, experience, examinations or assessments must not be required of a labour mobility applicant unless a labour mobility exception has previously been approved by government and publicly posted.
5. Regulatory authorities may create licensure and/or certification categories to regulate an occupation in their jurisdictions; however, these authorities cannot deny certification to a labour mobility applicant that is practicing the same scope of practice for that occupation in another jurisdiction regardless of differences in these certification categories. If a material difference exists in the scope of practice, then an exception to labour mobility based on a legitimate objective must be approved by a government.
6. Regulatory authorities should work together with other provinces and territories to understand, and where possible and practical, take steps to reconcile differences in occupational standards. To further streamline labour mobility, where possible and practical, regulatory authorities may consider coordinating licensure and/or certification categories and scopes of practice for an occupation.
7. If a labour mobility applicant has been given a practice limitation, restriction or condition, regulatory authorities are encouraged to, where possible and practical, make a reasonable effort to certify the applicant with an equivalent practice limitation, restriction or condition.

* This document does not constitute a legal interpretation of Chapter 7 of the AIT or the CFTA and does not supersede provincial/territorial legislation.

Best Practice Checklist for Certifying Labour Mobility Applicants
Permissible Requirements under Chapter 7

Complete an Application

Regulatory authorities can require a labour mobility applicant (a person currently certified in another Canadian province or territory) to complete an application form. The application process should be transparent, focus on administrative requirements and not reassess an applicant's competencies.

Some regulatory authorities have a separate application form for applicants currently certified in another province or territory in Canada. Some regulatory authorities also offer information regarding their obligations relating to Chapter 7 of the Canadian Free Trade Agreement (CFTA) on their websites.

Application Processing Fee

Regulatory authorities can require a labour mobility applicant to pay an application processing fee.

Except for the actual cost differentials, a labour mobility applicant should not have to pay more than a province's or territory's own applicants are required to pay.

Proof of Current Certification in Another Province/Territory

Regulatory authorities can require a labour mobility applicant to provide proof that he/she is currently certified in another province or territory in Canada. If the applicant is not currently certified in another Canadian jurisdiction, the applicant is not a labour mobility applicant and can be directed to a regulatory authority's application process for first-time applicants.

A regulatory authority might consider proof of an applicant's current certification. This could be satisfied by a copy of the applicant's certification, license,

and/or registration from the jurisdiction(s) in Canada where the applicant is currently certified.

To verify that the certification is valid a regulatory authority could:

- Contact the regulatory authority directly to verify the certification; and/or,
- Require that the applicant have the regulatory authority where he/she is currently certified complete a form to prove the certification.

Where a labour mobility applicant is currently certified in more than one province or territory, a regulatory authority may request proof of current certification from each of those provinces or territories.

Insurance/Malpractice Coverage

Regulatory authorities can require a labour mobility applicant to obtain insurance, malpractice coverage or similar protection.

A labour mobility applicant should not be required to obtain more insurance, malpractice coverage or similar protection than a province or territory's own applicants are required to obtain.

Post a Bond

Regulatory authorities can require a labour mobility applicant to post a bond.

The labour mobility applicant should not be required to post a higher bond than that which a province or territory's own applicants are required to post.

Criminal Background Check

Regulatory authorities can require a labour mobility applicant to provide a criminal background check, such as police and/or RCMP checks. This may include additions such as vulnerable sector checks or child abuse registry checks along with local, national or international checks.

A labour mobility applicant should not have to undergo a more onerous criminal background check than that which a province or territory's own applicants are required to undergo.

Evidence of Good Character

Regulatory authorities can require a labour mobility applicant to provide evidence of good character.

A regulatory authority could consider evidence of a labour mobility applicant's good character. This could be satisfied through the following:

- Criminal record checks, including vulnerable sector check and or child abuse registry check;
- Disclosure of any disciplinary issues; and,
- Disclosure of regulatory history (including formal proceedings).

A national scan of jurisprudence decisions in the area of good character has shown that courts will often consider certain factors when determining if denial of licensure based on good character is warranted. Such factors could include how recent the offence was and how relevant it is to an applicant's conduct in his/her practice of the occupation. To further streamline labour mobility, where possible and practical, regulatory authorities may consider working together on defining good character in the regulated occupation. A labour mobility applicant should not have to provide more onerous evidence of good character than that which a province or territory's own applicants are required to provide.

Evidence of Good Standing

Regulatory authorities can require a labour mobility applicant to provide evidence that he/she is in good standing in other Canadian provinces and territories where the applicant is currently certified.

Examples of what a regulatory authority might provide on behalf of an applicant's good standing in another jurisdiction may include:

- Fees have been paid;
- Continuing education/competency requirements have been met within the required timeframe;
- Practice hour requirements have been met within the required timeframe; and
- An applicant has practiced in his/her jurisdiction or has not had a substantial break in his/her practice.

To further streamline labour mobility, where possible and practical, regulatory authorities may consider working together on defining good standing in the regulated occupation.

A regulatory authority may not ask a labour mobility applicant to provide evidence of good standing from a jurisdiction where the applicant was previously, but is no longer, certified.

A generally acceptable understanding of good standing is that a member of an occupation who has unfulfilled obligations to his/her regulatory authority (e.g., outstanding fees, outstanding requirements to provide information, unfulfilled continuing competency requirements, lack of practice in that jurisdiction, lack of proof of professional liability insurance) is not in good standing until the obligations are satisfied. A regulatory authority's definition of good standing must be the same for all of its certified workers.

Demonstrate Local Knowledge

Regulatory authorities can require a labour mobility applicant to demonstrate his/her knowledge of any measures that are specific to a province or territory.

The requirement must be focused on measures that relate to the practice of the occupation in the regulatory authority's jurisdiction (for example laws/acts/regulations/codes and/or other differences for the work in the receiving jurisdiction compared to other jurisdictions in Canada). This requirement does not allow a regulatory authority to re-assess an applicant's competency to practice the occupation.

A regulatory authority could require a demonstration of local knowledge; the following are requirements that could be administered:

- A short test that reviews the scope of practice in the jurisdiction and the laws, acts, regulations, codes, etc. that apply to the practice of the occupation.
- A declaration that the applicant has read, studied, and understands the laws, acts, regulations, codes, and/or scope of practice for the occupation in the jurisdiction.

Some factors that are considered when determining whether an exam/test requirement is non-material:

- Type of exam/test (multiple choice vs. long or short answer);
- Time required to study for the exam/test (how many hours);
- Time required to complete the exam/test (minutes/hours);
- Accessibility: Where the exam/test must be completed (online or in a particular location);

- Accessibility: How often the exam/test is available to be completed (on demand or once a month etc.); and,
- Cost to the applicant.

This requirement must be non-material in nature. If a regulatory authority requires a worker to demonstrate local knowledge or is considering an additional requirement, it should contact its Labour Mobility Coordinator for advice.

Proof of Proficiency in English or French

Regulatory authorities can require a labour mobility applicant to demonstrate proficiency in either English or French as a condition of certification if the applicant has not already been required to do so by the regulatory authority where the applicant is currently certified.

An example of what a regulatory authority might consider as part of the application process is a question such as: "Were you required to demonstrate proficiency in English/French before you received certification in your current province or territory in Canada? If yes, please attach proof of completion."

Chapter 7 does not apply to measures pertaining to the official language requirements of Québec, Nunavut and the Northwest Territories.

This additional language proficiency requirement would only be applicable in a circumstance where a labour mobility applicant was not required to meet or has not met an equivalent requirement to demonstrate proficiency for the required language in the province or territory where he or she is currently certified. The fact that the applicant has not completed the same exam with the same pass score as normally required within a province or territory would not be an acceptable reason for requiring the additional language proficiency requirement.

Additional Information Requests Not Explicitly Mentioned in Chapter 7

As per the obligations of Chapter 7, information not explicitly mentioned in the Chapter must not be used to reassess an applicant's competencies or abilities to practice his/her occupation as a condition of certification. A regulatory authority should contact its Labour Mobility Coordinator regarding any other information it is considering requesting from labour mobility applicants to see if the request follows the principles of Chapter 7.

Regulatory Authorities sometimes request that applicants (including labour mobility applicants) provide other information that is not explicitly mentioned in Chapter 7, as part of the application process (resumes, job descriptions, self-assessments (often online), transcripts, employment history/verification of employment).

Keeping in mind that the purpose of Chapter 7 is to enable any worker certified for an occupation by a regulatory authority to be recognized as qualified by all other Parties, regulatory authorities should consider the purpose of requesting the information and whether it is actually necessary to certify a labour mobility applicant. As a guiding principle, this additional information should only be requested to facilitate the registration process.

For more information: www.workersmobility.ca

To further facilitate labour mobility, where possible and practical, regulatory authorities could also consider working together to transfer a certified worker's file to other regulatory bodies in Canada, upon request and approval by the certified worker.
