

CANADIAN FREE TRADE AGREEMENT

Consolidated Version



**CANADIAN
FREE TRADE
AGREEMENT**

**ACCORD DE
LIBRE-ÉCHANGE
CANADIEN**

2017

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Consolidated Version

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Chapter Seven - Labour Mobility

Article 700: Purpose

The purpose of this Chapter is to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility within Canada and, in particular, to enable any worker certified for an occupation by a regulatory authority of one Party to be recognized as qualified for that occupation by all other Parties.

Article 701: Scope and Coverage

1. This Chapter applies to any measure adopted or maintained by a Party relating to:
 - (a) residency requirements for workers as a condition of access to employment opportunities or as a condition of certification relating to a worker's occupation;
 - (b) certification requirements, other than residency requirements, for workers in order to practice an occupation or use a particular occupational title; and
 - (c) occupational standards.
2. This Chapter does not apply to:
 - (a) social policy measures including labour standards and codes, minimum wages, employment insurance qualification periods, and social assistance; and
 - (b) Quebec's, Nunavut's, and the Northwest Territories' measures pertaining to their official language requirements.

Article 702: Extent of Obligations

1. For the purposes of Article 103(d) (Extent of Obligations), each Party shall, through appropriate measures, ensure compliance with this Chapter by non-governmental bodies that exercise authority delegated by law.
2. Each Party shall, through appropriate measures, seek compliance with this Chapter by non-governmental bodies other than those that exercise authority delegated by law.

Article 703: Relationship to Other Agreements

If there is an inconsistency in a particular case between a provision of this Chapter and a provision of any other agreement between two or more Parties respecting matters covered by this Chapter, the agreement that is more conducive to labour mobility in that particular case prevails to the extent of the inconsistency. For greater certainty, any such agreement may prevail only as between the Parties that are party to that agreement.

Article 704: Residency Requirements

1. Subject to Article 707, a Party shall not require a worker of a Party to be resident in its territory as a condition of:

- (a) eligibility for employment; or
- (b) certification relating to the worker's occupation.

2. With respect to the Government of Canada, paragraph 1(a) means that, subject to Article 707, it shall not require a worker of a Party to be a resident of a particular province or territory as a condition of eligibility to apply, in an external appointment or hiring process, for appointment or hiring to a position or job in:

- (a) federal public service departments, departmental corporations, Crown corporations, separate agencies, and other portions of the public administration, that are listed in Schedules I to VI of the *Financial Administration Act* (Canada), as amended; and
- (b) other Crown corporations, as defined in the *Financial Administration Act* (Canada), as amended, that are not covered under paragraph (a).

Article 705: Certification of Workers

1. Subject to paragraphs 2, 3, 4, and 6, and Article 707, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party that regulates that occupation without any requirement for any material additional training, experience, examinations, or assessments as part of that certification procedure.

2. Subject to paragraphs 3 and 4, and Article 707, each Party shall recognize any worker holding a jurisdictional certification bearing the Red Seal endorsement under the Interprovincial Standards Red Seal Program as qualified to practice the occupation identified in the certification.

3. A regulatory authority of a Party may, as a condition of certification for any worker referred to in paragraphs 1 or 2, impose requirements on that worker (other than requirements for material additional training, experience, examinations, or assessments), including requirements to:

- (a) pay an application or processing fee;
- (b) obtain insurance, malpractice coverage, or similar protection;
- (c) post a bond;
- (d) undergo a criminal background check;

- (e) provide evidence of good character;
- (f) demonstrate knowledge of the measures maintained by that Party applicable to the practice of the occupation in its territory; or
- (g) provide a certificate, letter, or other evidence from the regulatory authority in each territory in which they are currently certified confirming that their certification in that territory is in good standing;

provided that:

- (h) subject to paragraph 5(c), any requirements referred to in paragraphs (a) through (f) are the same as, or substantially similar to, but no more onerous than, those imposed by the regulatory authority on its own workers as part of the normal certification process; and
- (i) the requirement does not create a disguised restriction on labour mobility.

4. Nothing in paragraphs 1 or 2 limits the ability of a regulatory authority of a Party to:

- (a) refuse to certify a worker or impose terms, conditions, or restrictions on his or her ability to practice if such action is considered necessary to protect the public interest as a result of complaints or disciplinary or criminal proceedings in any other jurisdiction relating to the competency, conduct, or character of that worker;
- (b) impose additional training, experience, examinations, or assessments as a condition of certification if the person has not practiced the occupation within a specified period of time;
- (c) notwithstanding Article 808 (Language), require the worker to demonstrate proficiency in either English or French as a condition of certification if no equivalent language proficiency requirement was imposed on, and satisfied by, the worker as a condition of the worker's certification in his or her current certifying jurisdiction; or
- (d) assess the equivalency of a practice limitation, restriction, or condition imposed on a worker in his or her current certifying jurisdiction to any practice limitation, restriction, or condition that may be applied by the regulatory authority to a worker in its territory, and apply an equivalent practice limitation, restriction, or condition to the worker's certification, or, if the regulatory authority has no provision for applying an equivalent limited, restricted, or conditional certification, refuse to certify the worker;

provided that:

- (e) any such measure is the same as, or substantially similar to, but no more onerous than, that imposed by the regulatory authority on its own workers; and
- (f) the measure does not create a disguised restriction on labour mobility.

5. Subject to Article 707, each Party shall ensure that any measure that it adopts or maintains relating to certification of workers of any other Party:

- (a) is published on the website of the relevant regulatory authority or through a readily accessible website of the Party;
- (b) results in expeditious certification; and
- (c) except for actual cost differentials, does not impose fees or other costs that are more burdensome than those imposed on its own workers.

6. If a worker has been certified for an occupation by a regulatory authority of a Party, nothing in this Article prevents a regulatory authority of any other Party from permitting the worker to practice that occupation in its territory without further certification.

Article 706: Occupational Standards

1. Each Party may adopt or maintain any occupational standard, and in doing so, may establish the level of protection that it considers to be appropriate in the circumstances. The Parties agree to take steps to reconcile differences in occupational standards, to the extent possible and where practical.

2. Further to paragraph 1, each Party shall, to the extent possible and where practical, adopt occupational standards based on common interprovincial standards, including occupational standards developed for the Interprovincial Standards Red Seal Program, or international standards. The Parties acknowledge their continued commitment to the Interprovincial Standards Red Seal Program, including the use of National Occupational Analyses, as a well-established means of establishing common interprovincial standards for trades.

3. If occupational standards have not been established in the territory of a Party in respect of a particular occupation but exist in the territory of any other Party, and the Party without the occupational standards wishes to develop such occupational standards, it shall do so in a manner conducive to labour mobility. A Party intending to develop such occupational standards shall notify the other Parties of its intent and afford them an opportunity to comment on the development of those occupational standards.

4. If occupational standards do not exist in the territory of any other Party in respect of an occupation and a Party considers it necessary to establish occupational standards for that occupation, the process of development of new occupational standards shall occur in a manner conducive to labour mobility. A Party intending to develop new occupational standards shall notify the other Parties of its intent and afford them an opportunity to comment on the development of those occupational standards.

5. If a Party considers it necessary to make changes to any standards in respect of an occupation, the process for making such changes shall occur in a manner conducive to labour mobility. A Party intending to make such changes shall notify the other Parties and afford them an opportunity to comment on the change to those standards.

Article 707: Legitimate Objectives for Labour Mobility

1. If it is established that a measure falling within the scope and coverage of this Chapter is inconsistent with Article 201 (Non-Discrimination), Article 704, or Articles 705.1, 705.2, or 705.5, that measure is permissible under this Chapter provided that:

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

2. For greater certainty, for purposes of the application of paragraph 1(b) to Articles 705.1, 705.2, or 705.5, a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination, or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination, or assessment requirements as necessary to achieve a legitimate objective for labour mobility. In the case of a difference related to academic credentials, education, training, or experience, the Party seeking to impose an additional requirement must be able to demonstrate that any such difference results in an actual material deficiency in skill, area of knowledge, or ability. As an example, the imposition of a requirement for additional education, training, or experience may be justified under paragraph 1(b) if a Party can demonstrate that:

- (a) there is a material difference between the scope of practice of the occupation for which the worker is seeking to be certified in its territory and the scope of practice of the occupation for which the worker has been certified by the regulatory authority of another Party; and
- (b) as a result of that difference, the worker lacks a critical skill, area of knowledge, or ability required to perform the scope of practice of the occupation for which the worker seeks to be certified.

3. If a Party adopts or maintains a measure under paragraph 1, it shall give notice in writing to the Forum of Labour Market Ministers ("Forum") of the measure, in the form, and containing the information, considered appropriate by the Forum. The notice shall indicate the Party's justification for the measure and the anticipated duration of the measure.

4. The Forum shall develop and implement a framework for the Parties to establish a list of specific measures taken under paragraph 1 for which notice has been given to the Forum under paragraph 3. This list will be published online by the Forum.

Article 708: Implementation, Administration, and Assessment

1. The Forum shall:

- (a) promote the implementation of and ongoing adherence to this Chapter, and develop a work plan or plans related to the objectives of this Chapter;
- (b) develop and implement the framework for the implementation of Article 706;
- (c) develop the form and content required for notices under Article 707.3;
- (d) develop and implement the framework for the posting of measures under Article 707.4; and
- (e) annually produce a report on the operation of this Chapter and submit that report to the Committee.

2. The annual report referred to in paragraph 1(e) shall include:

- (a) an assessment of the effectiveness of this Chapter, including an assessment of whether there have been any unintended adverse consequences, together with appropriate recommendations to address concerns identified in the assessment, including recommended amendments to this Chapter;
- (b) a list of measures for which notice has been given under Article 707.3, together with a description of their respective justification and their anticipated duration; and
- (c) a summary of any disputes that have arisen between the Parties during the year concerning the interpretation or application of this Chapter, and the results of any consultations or other dispute resolution procedures resorted to by the Parties concerned to resolve the disputes.

3. The Forum may establish any committees that it considers necessary to assist it in the implementation of any work plan. The committees may be composed of representatives of the Parties and, if appropriate, of relevant regulatory authorities, other non-governmental bodies, and interest groups.