

Duty for Necessary Assessment Criteria Policy

November 2021

This policy clarifies the purpose of this duty, its relevance for the fair assessment of internationally educated applicants and the types of measures that support compliance.

Legislative Requirements

The Fair Registration Practices in Regulated Professions Act includes a duty in the Fair Registration Practices Code concerning the relevance and necessity of qualification requirements. Specifically:

Assessment criteria must be necessary

8(4) The criteria used in an assessment of qualifications must be necessary to assess competence in the practice of the profession.

Purpose

The duty to maintain only necessary requirements is needed to ensure applicants, particularly internationally educated applicants (IEAs), are subject to requirements that are needed to ensure safe, competent and ethical practice. Under the 'Review of Registration Practices' section, 'Content of Review' (15(2)), Manitoba's fairness legislation identifies the need for registration reviews to assess the relevance and necessity of qualification requirements.

Fairness Issue

The duty stipulates that assessment criteria must be necessary to determine competence for professional practice. Professional competence is complex, requiring profession-specific knowledge, skills, judgment and ethical disposition. Assessments used by professions reflect this complexity and cover a range of evaluations to determine different aspects of qualification.

Historically, many systems of assessment were designed for domestically educated applicants (DEAs). However, in some cases, what is reasonable for a DEA may not be fair for an IEA. Failure to recognize how a singular standard impacts different types of applicants can lead to systemic discrimination.

Common examples of this type of fairness issue include:

- assessing foreign academic qualifications solely against a conventional Canadian post-secondary education standard rather than an outcomes-oriented standard based on academic training required for competent practice in the field
- requiring a period of internship or conditional registration to acquire professional experience before full licensure for those internationally educated professionals with extensive professional experience in practice environments similar to Canadian practice
- redundant assessment where IEAs are subject to additional assessments beyond what is required of DEAs and where this involves the repeated examination of similar content, knowledge or skills

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Measures for Compliance

Requirements and assessment criteria that may be reasonable for DEAs, but that frustrate the fair and timely consideration of internationally educated professionals should be reviewed and may require accommodation or possibly an alternative assessment strategy. To be fair, remedies should not involve compromising standards; rather this is about upholding standards, through alternative means.

Among Manitoba professions, progress has been made addressing many of the fairness issues surrounding necessary assessment criteria. Many regulators have:

- moved to an outcome-based education standard and assess for substantive equivalence
- strategies to assess qualifications evident in professional work experience and will waive or reduce assessments and internships for qualified IEAs
- eliminated documentation that is unnecessary or of limited relevance
- introduced alternative assessment strategies and registration pathways
- expanded mutual recognition and reciprocity agreements allowing fast-track registration pathways for IEAs from jurisdictions with similar training and practice standards

Complying with the duty for necessary assessment for a profession involves two steps. Firstly, self-assessment to review practices to ensure requirements and assessment criteria are reasonable and warranted for IEAs. Secondly, where issues are identified, implementation of practical and feasible solutions that address the issue(s). The Fair Registration Practices Office is available to review issues and support Manitoba professions with information and advice to mitigate potential fairness issues.

Appendix: Supreme Court of Canada: Meiorin Decision

The Fair Registration Practices Office's position regarding necessary assessment criteria for competent practice shares a strong similarity with much of the analysis provided in the [Supreme Court of Canada's 1999 Meiorin decision](#), *British Columbia (Public Service Employee Relations Commission) v British Columbia Government Service Employees' Union* [1999] 3 SCR 3.

In Meiorin, the Court set out a three-part test to determine whether an occupational requirement is bona fide or warranted. Paraphrasing, a requirement is legitimate if it:

- a. has a purpose rationally connected to competence
- a. is adopted in good faith
- a. is necessary to accomplish its purpose and cannot be accommodated otherwise without imposing undue hardship for the organization

As a matter of principle, assessment criteria, like occupational requirements, need to be warranted or necessary in these ways. Where feasible and needed to be fair, to avoid systemic discrimination, professions should accommodate IEAs by adopting alternative assessment criteria and strategies.