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Foreign-Trained Workers, Access to Regulated Professions, and Public Safety: What Canadian Human Rights Law has to Teach

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Abstract

This paper examines how Canadian human rights law can inform the design of mutual recognition agreements (MRAs) for professional qualifications concluded under transnational trade agreements, such as the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union. While these instruments establish procedural frameworks for MRAs, they do not ensure compliance with domestic equality guarantees. The paper's objective is to identify how anti-discrimination norms, grounded in the principle of substantive equality, should guide Canadian professional regulators when negotiating and implementing MRAs.

It first sets out the analytical framework for assessing discrimination under Canadian human rights law, as articulated by the Supreme Court of Canada. It then examines leading decisions on discrimination in access to regulated professions, with particular attention to foreign-trained professionals, before applying this framework to typical features of qualification recognition processes and to existing MRAs, including those adopted under the Québec–France Agreement.

The analysis shows that conditions frequently imposed on foreign-trained candidates – such as additional examinations or internships, rigid experience thresholds, and limited opportunities to demonstrate equivalence – may create adverse effects based on individuals' place of origin, and therefore trigger a duty to justify these measures as bona fide, proportionate, and reasonably necessary to protect public safety. The paper concludes that MRAs should incorporate evidence-based compensatory measures, preserve meaningful individualized assessments of equivalence, and include mechanisms for periodic review to identify and correct systemic barriers, thereby promoting both professional mobility and substantive equality of opportunity.

Keywords: *Discrimination, Equality, Foreign-trained professionals, International mobility, Mutual recognition agreements*

1. Introduction

Following the trade tensions that emerged between Canada and the United States in the late 2010s, Canada has made concerted efforts to diversify its trade and investment relationships. This diversification strategy has led to the negotiation of several major trade agreements with partners across Europe and the Asia-Pacific region. Beyond their economic objectives, these agreements create opportunities to address broader questions of labour mobility and regulatory cooperation, particularly through the mutual recognition of professional qualifications. The *Comprehensive Economic and Trade Agreement* (CETA) between Canada and the European Union, signed in 2016, anticipated this trend by dedicating an entire chapter to the recognition of professional qualifications, an issue deemed to be one of the main obstacles to migrants' access to labour in Canada (Houle & Yssaad, 2010, p. 20; Grant, 2016, p. 5). The *Canada–United Kingdom Trade Continuity Agreement* (Canada-UK TCA), which entered into force in 2021, reflects a similar commitment to facilitating professional mobility through regulatory collaboration.

The inclusion of such provisions highlights the growing role of international trade instruments in shaping access to regulated professions, a domain traditionally governed by domestic law and professional self-regulation. In Canada, the regulation of professions falls within provincial jurisdiction (*Constitution Act, 1867*, s. 92(13)). To practice a regulated profession, individuals must obtain a license from the relevant provincial authority (often called "professional college" or "professional order"), which restricts access as a means of ensuring public safety. Foreign-trained professionals must therefore have their qualifications recognized by that authority. However, the recognition process is often lengthy and costly, and more often than not, it involves compensatory measures such as additional courses, examinations, or supervised practice that foreign-trained professionals must comply with to be fully entitled to practice their profession (Doucet, 2026). These requirements can take years to complete and may deter many qualified individuals from pursuing licensure (Bourgeault & Neiterman, 2013, p. 199). Recent trade agreements, by contrast, seek to simplify this process through frameworks that encourage the negotiation of mutual recognition agreements (MRAs) between competent regulators.

Both CETA and the Canada–United Kingdom TCA operate within the same framework for professional mobility (the latter incorporating CETA's provisions *mutatis mutandis* under its Article I). Chapter 11 of CETA, titled *Mutual recognition of professional qualifications*, establishes a structured mechanism through which regulators and professional bodies of the State Parties may negotiate the mutual recognition of credentials. This mechanism, which forms part of a new wave of transnational agreements traceable to late-1980s Europe (Côté, 2008, p. 338-348), enables competent regulators and professional bodies of the State Parties to determine in advance the conditions under which professionals trained in the territory of one Party to an MRA may practice a regulated profession in the territory of the other (Houle & Doucet, 2016, p. 139).

As part of the framework to achieve mutual recognition, Annex 11-A of CETA provides non-binding guidelines offering practical direction to regulators developing MRAs (which also apply within the Canada-UK TCA). These guidelines set out a four-step process for assessing and recognizing professional qualifications.

The first step requires the negotiating entities (i.e., the regulators) to "verify the overall equivalence of the scopes of practice or qualifications of the regulated profession in their respective jurisdictions." To do so, they must identify the activities encompassed by the profession as well as the qualifications required in each jurisdiction, including the level of education, experience, and examinations.

In the second step, regulators assess whether substantial differences exist either in the scope of qualifications or in the scope of practice. Substantial differences in the scope of qualifications arise in cases of significant disparities in essential knowledge, or in the duration or content of professional training between jurisdictions, whereas substantial differences in scope of practice occur where one or more professional activities are not part of the corresponding profession in the applicant's home jurisdiction, where they require specific training in the host jurisdiction, or where the training for these activities covers materially different subject matter. If no substantial differences are found, the qualifications are deemed equivalent. If such differences do exist, regulators proceed to the third step and identify appropriate compensatory measures to bridge the gap.

These compensatory measures may take the form of an adaptation period (i.e., a period of supervised practice, possibly accompanied by further training, under the responsibility of a qualified professional in the host jurisdiction) or an aptitude test, limited to the applicant's professional knowledge and designed to assess their ability to practice in the host jurisdiction. In all cases, any measure adopted must be proportionate to the specific differences identified. Regulators are also encouraged to consider whether the applicant's prior professional experience in the home jurisdiction sufficiently compensates, in whole or in part, for those differences before imposing additional requirements.

The fourth and last step of the process is the specification of the conditions for recognition in the MRA draft. Before it can be implemented in the corresponding jurisdictions, the drafted MRA must be approved by the Joint Committee on Mutual Recognition of Professional Qualifications established under CETA's section 26.2.1(b) or article II of the Canada-United Kingdom TCA.

However, MRAs negotiated by Canadian regulatory authorities under CETA, the Canada-United Kingdom TCA (or under any other agreement) must also conform to domestic legal norms. Canada is a dualist state, which means that international and transnational agreements, including MRAs, have no direct effect in domestic law unless implemented through legislation (Emanuelli, 2010, paras. 313-337). As such, any implementing measure must comply with the Canadian Constitution and with quasi-constitutional norms (i.e., norms which are deemed to have precedence over ordinary laws).

In Canada, the professional system, comprising the norms, practices, and decisions adopted by competent professional authorities, is subject to scrutiny under provincial human rights legislation, such as the *Charter of Human Rights and Freedoms* of Québec, the Ontario and British Columbia *Human Rights Codes*, and the *Alberta Human Rights Act*, all of which prohibit discrimination. A deep understanding of Canadian human rights law is thus of foremost importance for regulators engaging in the negotiation of MRAs, as these agreements, once implemented, may be challenged under provincial human rights legislation.

This paper aims to shed light on the obligations of professional authorities in this context, with a view to facilitating the negotiation and adoption of MRAs that align with

Canadian human rights legislation. It proceeds by first outlining the legal framework applicable to discrimination claims in access to regulated professions, followed by an analysis of the relevant case law. Finally, it considers the implications of these obligations in the specific context of MRAs and highlights potential challenges arising from the intersection between international trade law and domestic human rights protections.

2. The framework of Canadian anti-discrimination provisions

Before exploring what Canadian human rights law can teach us, it is essential to outline the framework that governs discrimination claims. The analytical approach applied by courts and tribunals under provincial human rights legislation was articulated by the Supreme Court of Canada in its landmark decisions *Meiorin* and *Grismer*. This framework involves a two-step analysis.

At the first step, the complainant must establish, on a balance of probabilities, a *prima facie* case of discrimination. The expression *prima facie discrimination* refers to the complainant's burden of proof u and requires showing that the impugned conduct or rule has a prejudicial effect on members of a protected group. It is crucial to emphasize that *prima facie* discrimination does not, in itself, constitute unlawful discrimination; it does so only in the absence of a valid justification.

Across Canadian jurisdictions, to make out a *prima facie* case, complainants must demonstrate three elements: (1°) that they possess a characteristic protected from discrimination under the applicable human rights statute; (2°) that they experienced an adverse impact in an area covered by the statute, such as employment, services, or access to professional licensing; and (3°) that the protected characteristic was a factor in the adverse impact (*Moore*, para. 33; *Stewart*, para. 24). Notably, it is not necessary to establish any intent to discriminate under Canadian human rights legislation (*Andrews*, p. 174).

Once a *prima facie* case of discrimination is made, the onus shifts to the defendant to prove that his conduct, practices or norms are justified on the basis of the exemptions provided for in the applicable human rights legislation or those developed by the courts (*Bombardier*, para. 37). If it cannot be justified, it will be found discriminatory, and the respondent may be ordered to cease the discriminatory practice, amend the impugned rule, and, where appropriate, pay compensation to the complainant (*Moore*, paras. 33 and 49; *Mouvement laïque québécois*, para. 37;). Although provincial statutes vary slightly, the justification analysis generally requires the respondent to show that: (1°) the impugned standard or requirement pursues a legitimate and rational objective; (2°) it was adopted in good faith; and (3°) it is reasonably necessary to achieve that objective (*Grismer*, para. 21).

At its core, the *Meiorin/Grismer* framework, later reaffirmed by the Supreme Court of Canada in cases such as *Moore* and *Stewart*, embodies the principle of substantive equality, according to which norms, practices, or decisions should not, because of irrelevant personal differences, impose a more burdensome or less beneficial impact on one individual than on another (*Andrews*, p. 165). Substantive equality acknowledges that equal treatment does not always mean identical treatment and that differential measures may sometimes be required to avoid perpetuating disadvantage for members of protected groups.

This framework provides the foundation for assessing whether regulatory standards in professional licensing, including qualification recognition processes applied to foreign-trained professionals, comply with the guarantees of substantive equality. The following section examines how Canadian courts and tribunals have applied this analysis in cases involving alleged discrimination in access to regulated professions.

3. The discrimination framework applied to access to regulated professions by foreign-trained professionals

Over the years, the question of discrimination in access to regulated professions by foreign-trained professionals has been raised before courts and specialized tribunals on several occasions. Whether or not the claims were successful, these decisions provide valuable guidance on what types of conduct, practices, or norms have been considered “suspect” and therefore require a reasonable justification to avoid being deemed discriminatory and unenforceable (3.1). They also shed light on how the justification process has been interpreted, including what can – or cannot – be justified (3.2).

The purpose of this section is not to exhaustively review Canadian case law on discrimination in access to regulated professions by foreign-trained professionals, as such an exercise has already been undertaken elsewhere (Doucet & St-Laurent, 2018; Doucet, 2026). Rather, it aims to highlight the key principles and rationales that emerge from the jurisprudence, as well as their implications for professional authorities.

With a few exceptions, only conclusions drawn from cases that applied the analytical framework set out in *Meiorin* and *Grismer* are discussed here, as other cases do not reflect the current state of the law. Most of the decisions analyzed were rendered by specialized administrative tribunals – primarily human rights tribunals for the most part – while only a handful were issued by courts in the context of ordinary judicial proceedings. The majority of the selected decisions involve actions brought against professional authorities. However, in some cases, the claims also targeted other actors – such as governments, hospitals, or universities – who played a role in the admission process to a regulated profession. Finally, most decisions dealing only indirectly with access to a regulated profession (for instance, those concerning access to internships directed against employers) were dismissed.

3.1 The prima facie case of discrimination: What has been considered as “suspect” conditions and practices

Neiznanski can be considered the first decision in which the analytical framework later set out in *Meiorin* and *Grismer* was applied in the context of discrimination against foreign-trained professionals. Interestingly, the Ontario Board of Inquiry (the predecessor of the Human Rights Tribunal of Ontario) rendered this decision in 1995, several years before the Supreme Court of Canada released those landmark judgments, making its approach somewhat visionary in anticipating the reasoning that would later become central to Canadian discrimination law (Doucet & St-Laurent, 2018, p. 225-227). This case concerns Dr. Neiznanski, an ophthalmologist trained at the University of Warsaw in Poland, who had more than 20 years of work experience before arriving in Canada as a refugee. He claimed that he was discriminated against in gaining access to a funded residency position, which was one of the prerequisites for becoming licensed to practice medicine in Ontario.

Although the claim was ultimately rejected, in *Neiznanski*, the Ontario Board of Inquiry underlined, in an *obiter*, that the conditions to become a licensed physician in Ontario, which were modified after Dr. Neiznanski introduced his claim, discriminated against foreign-trained applicants:

> […] the PIP [Pre-Internship Program] is limited to 24 candidates. In contrast, every graduate from an Ontario medical school is guaranteed the opportunity of an internship position and upon successful completion of the internship, a position in a Residency Program [..]. Even though a foreign-trained person may be as qualified on the basis of objective standards as measured against the Ontario graduate, and may even be better qualified than some Ontario graduates, the foreign-trained person cannot gain access to the licensing process unless he/she is one of the 24 chosen for the PIP. If the foreign-trained physician can gain entry to the PIP, upon successful completion of the PIP the physician can then apply for a Residency position in any desired specialty. This would mean two more years for a Family Medicine residency or four or more years in other areas of specialization. [...] A foreign-trained Canadian citizen or landed immigrant physician is now discriminated against by the present system for gaining admission to Residency Programs as of 1994, because he/she would be excluded from consideration on the merits (other than through the limited number entry through the PIP). Clearly this approach is unfair to such a candidate and just as clearly this approach means that not all the most qualified persons will become specialists, to the detriment of both the profession and the public. (paras. 45-48)

Building on this reasoning, the Board further identifies one of the key elements in establishing a prima facie case of discrimination in the context of access to regulated professions by foreign-trained professionals. More precisely, the Board suggested that additional requirements imposed on foreign-trained professionals prior to licensure, on account of their foreign educational and experiential credentials, may have the effect of excluding or disadvantaging groups on the basis of place of origin, race, colour, or ethnic origin (Neiznanski, para. 51). That is because people generally obtain their education or training in their place of origin (CDPDJ, 2010, p. 6; Schwartz & Valel, 2011, p. 21). In other words, a distinction based on the place of education or training can result in discrimination based on prohibited grounds, as later confirmed by other cases, including Bitonti, Keith, and Mihaly (Doucet & St-Laurent, 2018, pp. 235-236).

An analysis of the case law allowed us to identify several types of distinctions, stemming from norms, conditions, or practices, that have created a disadvantage or burden for foreign-trained professionals. It is important to note that the courts or tribunals did not always conclude that discrimination, or even *prima facie* discrimination, existed in the cases referred to here. However, in some of these cases, certain conclusions (particularly those rejecting the existence of *prima facie* discrimination) can now be considered questionable, as they were reached under an incorrect analytical framework.

Over the years, courts and tribunals have found that charging higher application fees to foreign-trained professionals (*Durakovic*, para. 32) or imposing territorial restrictions on their practice (*Forghani*, p. 10; *Keith*, para. 29) are differential treatments. The same has been said of imposing compensatory measures – such as internships (*Bitonti*, paras. 171-173; *Neiznanski*, para. 49) or examinations (*Caliao*, paras. 34-36; *LPG*, para. 59) – if fulfilling such measures is not asked of Canadian-trained candidates. Some other conditions also raise suspicions, such as those related to the fact of not having practiced for a certain amount of time (CDPDJ, 2010, p. 7), or the requirement to have Canadian work experience (Ontario Human Rights Commission, 2013, p. 2-8).

Requiring foreign-trained candidates to fulfill the exact same conditions as Canadian-trained candidates may also amount to discrimination. Indeed, foreign-trained candidates are not in a comparable situation to their Canadian counterparts, as they may have different forms of training and professional experience. Following this logic, tribunals have found that professional authorities must provide applicants with the opportunity to demonstrate the equivalency of their qualifications (*Bitonti*, para. 235). This implies that they cannot unnecessarily require foreign-trained candidates to restart their studies in order to obtain a Canadian diploma, or to fulfill other conditions, without first allowing them to demonstrate that their training and work experience are equivalent. As discussed in the next subsection, exceptions to this principle should only occur in very limited circumstances.

However, as the courts have stressed, not all differential treatments affecting members of a protected group are discriminatory; such treatments must also be prejudicial (*Andrews*, pp. 168-169). The prejudice can take the form of a refusal or an impossibility to access the profession (*Bitonti*, para. 190; *Neiznanski*, para. 47), or even excessive delays in the admission process (*Andrews*, p. 183). More recently, in *Mihaly*, the Court of the Queen's Bench of Alberta concluded that imposing conditions to foreign-trained candidates, in the process of assessing their qualifications, creates in itself an adverse impact. As the Court declares:

> […] having to write examinations is in itself an adverse impact. Persons required to write examinations obviously have to expend time and resources (including, but not limited to, the examination fees) in order to prepare for and write the examinations, which is a form of adverse impact independent from the issue of whether they pass the examinations. (para. 78)

3.2 A reasonable justification based on public safety

Once *prima facie* discrimination has been established, the burden of proof shifts to the defendant (in this context, the professional authority) to justify its conduct, norm, or practice. This is generally done by demonstrating that it was adopted in good faith, pursued an objective rationally connected to the authority's functions, and was reasonably necessary to achieve that objective. The professional authority may also need to establish that it cannot, in the circumstances, accommodate members of the protected group without incurring undue hardship.

The *Neiznanski* decision is also quite instructive on this step of the analysis, as it captures the complexity of the issue and describes the reasoning that professional authorities must undertake in this particular context. The Board states:

> A Respondent to such a complaint would undoubtedly assert a defence that the purported ground of discrimination is 'reasonable and bona fide in the circumstances' […] for the protection of the public interest in respect of society's concerns relating to safety, health and welfare. The Ministry of Health and its surrogates [...] might argue that they cannot access accurately the foreign training and to license the foreign-trained person in these circumstances would jeopardize the public interest. […]
>
> Clearly, the maintenance of necessary public standards is a reasonable and bona fide ground for discrimination on the basis of jurisdiction of education or training, but the question then is – can the public interest be protected while at the same time the foreign-trained person's application for licensure is accommodated without undue hardship? Is there available an alternative, less onerous, approach that would ensure the public interest is protected? […] To have a fair system, and one that produces the most qualified specialists, the admissions process should consider all candidates on the merits whatever their place of education or training. (paras. 53 and 55)

To this day, only a few decisions have reached the justification stage. Nevertheless, these decisions have clarified certain aspects of the analysis (Doucet & St-Laurent, 2018, pp. 236-240).

It goes without saying that public safety is in itself a legitimate objective linked to a professional authority's functions, as recognized in the case law (*Bitonti*, paras. 199-200; *Mihaly*, para. 113; *Caliao*, paras. 33 and 39). It should also be noted that in some jurisdictions, legislation expressly identifies public safety as the authority's primary mission. For example, in Québec, section 23 of the *Professional Code* provides that, "[t]he principal function of each order shall be to ensure the protection of the public."

In general, professional authorities will not face significant difficulty in establishing that their norms, practices, or decisions were adopted or applied in good faith, unless the plaintiff proves an intention to discriminate (an element that is not required to establish discrimination). However, without questioning their good intentions, one cannot entirely dismiss the possibility that professional authorities may act in bad faith. For instance, in *Brar*, the British Columbia Human Rights Tribunal found that the provincial Veterinary Medical Association had adopted an excessively high English-language standard with the intention of excluding veterinarians of Indo-Canadian origin from the profession (*Brar*, paras 1266-1273).

While the case law is fairly clear regarding the first two elements of the justification analysis, greater uncertainty remains concerning the third element (i.e., whether the conduct, norm, or practice is reasonably necessary to achieve its purpose). Two major difficulties typically arise at this stage.

At this point, the focus shifts to the means adopted by professional authorities, which cannot be more stringent than what is strictly necessary to ensure public safety (*Grismer*, para. 21). However, very little guidance exists on what "public safety" actually encompasses, or on how far professional authorities may go in restricting access to regulated professions on this basis. To this day, the notion of "public safety" has not been defined in legislation, and few decisions have directly addressed this issue (Doucet & St-Laurent, 2018, pp. 245-247; Doucet, 2026).

Nevertheless, two decisions from the British Columbia Human Rights Tribunal provide some insight into the level of competence that may legitimately be required from candidates seeking admission to a profession. The first concerns Mr. Gichuru, a law student who was denied membership in the Law Society of British Columbia on the basis of mental disability (he had suffered from depression). While confirming that the Law Society had a statutory duty to assess applicants' competence and fitness to practise, the Tribunal concluded, relying on *Grismer*, that "the Law Society's standard cannot be an absolute guarantee of competence to practice law. Instead, it must be something lower, such as reasonable assurance of competence to practice law" (*Gichuru*, para. 497). The Tribunal reached a similar conclusion a few years later in *Brar*. According to its reasoning, "[i]t is clear that more than a minimal risk must be established when implementing a professional standard that must be met in order to practice. The appropriate goal is reasonable safety" (*Brar*, para. 1264).

The second difficulty concerns the concept of reasonable accommodation and the obligation for regulators to adopt standards that are as inclusive as possible. According to the case law, to be "reasonably necessary," a norm, practice, or decision must incorporate "every possible accommodation to the point of undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost" (*Grismer*, para. 32).

In the context of access to regulated professions, tribunals have held that professional authorities must accommodate foreign-trained candidates by providing them with the opportunity to demonstrate the equivalency of their qualifications (*Bitonti*, para. 235; *Neiznanski*, paras. 48 and 55), unless doing so would result in undue hardship for the professional authority (*Grismer*, paras. 32-33). The individual assessments, through which candidates can demonstrate equivalency, may allow the authority to waive some or all of the usual licensing conditions. They can also lead to the imposition of targeted compensatory measures designed to address specific deficiencies in a candidate's qualifications, thereby adapting the process to the individual's situation.

However, the case law offers limited guidance as to what form these individual assessments should take. At most, in at least two cases, tribunals suggested that certain types of individualized testing could impose undue hardship on professional authorities.

In *LPG*, a foreign-trained professional whose first language was Portuguese challenged the refusal of the College of Audiologists and Speech-Language Pathologists of Ontario to consider alternative evidence of English proficiency instead of the two standardized tests selected by the College. In reviewing that decision, the Health Professions Appeal and Review Board stated:

> Standardized tests are widely used in the professional regulatory environment to provide an objective assessment of qualifications, skills, knowledge and other matters, including language proficiency. As noted by the College, requiring applicants to demonstrate fluency by way of standardized, widely used and recognized tests helps ensure that the process of determining fluency is independent, objective, transparent, fair and impartial. Individual testing would be costly and inefficient such that it would impose undue hardship on the College, and in the Board's view would not provide a consistent, standardized and objective evaluation as offered by the TOEFL [Test of English as a Foreign Language] and the IELTS [International English Language Testing System] in terms of whether an applicant meets the fluency standard expected of the profession. (para. 70)

Similarly, in *Mihaly*, the Court of Queen's Bench of Alberta overturned the order of the Alberta Human Rights Tribunal requiring the professional association to appoint a committee to assess foreign-trained candidates, as this would have required significant resource commitments:

> As the Tribunal contemplated that APEGA [Association of Professional Engineers and Geoscientists of Alberta] could be called upon to provide this assistance for approximately 375 applicants a year, his assessment that this "would not cause undue hardship to the engineering profession nor does it appear to be cost prohibitive with all the dues-paying members" […] is questionable, to say the least. The assessment of the Appeal and Review Board in LPG that individual testing would be costly and inefficient (and would not provide a consistent, standardized and objective evaluation) is much more realistic. (para. 146)

In the Court's opinion, the opportunity offered by the association to foreign-trained candidates was sufficient, as its practice coherently ensured public safety. The association individually assessed applicants and agreed to waive examinations for those who had completed a graduate degree at a Canadian university or at a university located in a jurisdiction covered by an MRA, or for those who possessed ten years of progressively responsible engineering experience.

Despite the Court's conclusion, one may question whether the opportunity offered by the association was indeed sufficient. As author Geneviève St-Laurent noted, the Court merely stated that the association's practice met its objective, without deeply analyzing whether it had explored alternative approaches to reduce the negative impact on foreign-trained candidates (St-Laurent, 2016, pp. 110-111). Furthermore, one may argue that such a proactive approach, which appears to be required by the jurisprudence of the Supreme Court of Canada (*Central Alberta Dairy pool*, p 518-519; *Meiorin*, para. 38; *Moore*, para. 49), is consistent with the professional authorities' duty to ensure public safety. Indeed, in *Trinity Western University*, the Supreme Court emphasized that eliminating inequitable barriers to professional membership promotes the competence of members, improves the quality of services offered, and ultimately serves to ensure public safety (*Trinity Western University*, paras. 42-44).

4. MRAs and Non-Discrimination Guarantees: Unanswered Questions and difficulties

As pointed out in the introduction, CETA and the Canada-United Kingdom TCA aims to promote greater mobility of professionals between European countries and Canada. To this end, these agreements establish a framework to be followed by negotiating entities to facilitate the mutual recognition of professional qualifications. However, MRAs negotiated and adopted under this framework must not only comply with CETA's and the Canada-United Kingdom TCA's provisions, but also with the human rights obligations that bind professional authorities under Canadian law.

Except in the rare cases where MRAs provide for the automatic recognition of foreign-trained professionals' qualifications, they generally impose some form of compensatory measures on foreign-trained candidates (Houle & Doucet, 2016, pp. 148-165). As discussed earlier, such conditions are likely to be regarded as suspect, thereby requiring justification. In that respect, professional authorities must demonstrate that the measures contained in their MRAs do not go further than necessary to ensure public safety. In other words, compensatory measures must be proportionate to the differences identified in the scope of qualification and practice between the jurisdictions party to an MRA. While the guidelines contained in Annex 11-A of CETA do not bind negotiating entities in this regard, Canadian human rights law creates a positive obligation for professional authorities to ensure proportionality.

Canadian case law on discrimination in access to regulated professions also establishes that professional authorities must provide foreign-trained candidates with an opportunity to demonstrate the equivalence of their qualifications with those of Canadian-trained candidates. This may create practical difficulties, as MRAs typically predefine the conditions under which foreign-trained candidates may practise in the host jurisdiction and leave little room for individualized assessments. This is particularly evident in the MRAs concluded under the *Québec-France Agreement on the Mutual Recognition of Professional Qualifications* (Québec-France Agreement), a transnational accord that follows a framework similar to the one established in CETA. Such rigidity raises the question of whether the procedures set out in these MRAs are sufficiently inclusive.

Indeed, a 2016 study of the Québec–France MRAs found that only 4 of the 24 professions covered allowed for the full waiver of compensatory measures based on the professional experience of foreign-trained candidates (Houle & Doucet, 2016, pp. 153-154). Little has changed since that study was conducted. Some MRAs allow for partial waivers However, in all cases, professional experience appears to be assessed primarily in quantitative terms, rather than on the basis of the qualifications and competencies acquired through that experience (Houle & Doucet, 2016, pp. 155-157). Consequently, a candidate's experience will not be considered at all unless they meet the minimum threshold specified in the MRA (Commissaire à l'admission aux professions, 2016, p. 48).

Similarly, professional authorities rarely consider forms of experience, training, or education not expressly mentioned in MRAs when assessing applications. This issue was raised before the Commissioner for Admission to Professions in the context of a Québec–France MRA, where the *Ordre des Ingénieurs du Québec*, the authority supervising the profession of engineer in the province, refused to consider additional graduate studies completed in Québec by a French-trained engineer as part of the experiential credit that could shorten the required internship period. Following this complaint, the Commissioner recommended that professional authorities take such additional training into account (Commissaire à l'admission aux professions, 2015, p. 5).

These examples raise legitimate doubts about whether current MRAs meet the non-discrimination obligations arising from Canadian human rights law, particularly concerning the opportunity afforded to foreign-trained candidates to demonstrate the equivalency of their qualifications.

5. Conclusion

In this paper, we have demonstrated that, in order to design MRAs that effectively facilitate professional mobility between Canada and other States without compromising public safety, the negotiating entities must do more than simply follow the frameworks provided by international trade agreements. The MRAs negotiated by Canadian professional authorities must also comply with the fundamental rights of foreign-trained professionals, as guaranteed by Canadian human rights legislation.

Through an analysis of Canadian case law on discrimination in access to regulated professions, this paper has highlighted several obligations that relevant authorities must bear in mind when negotiating MRAs. However, some questions remain unanswered. For instance, very little information is available on the form that the opportunity for foreign-trained candidates to demonstrate the equivalence of their qualifications should take. Another difficulty arises when barriers to accessing a profession are the result of the combined actions of multiple actors involved in the admission process, as often occurs in health professions, where limited university placements and internship positions make it particularly challenging to fulfil compensatory measures.

In conclusion, we would like to stress that, to achieve the objectives pursued by Canada's various international agreements on professional mobility, negotiating entities should take into account the lessons learned from existing MRAs, particularly those adopted under the Québec–France Agreement. The Québec–France Agreement and other comparable frameworks share similar approaches to the mutual recognition of professional qualifications, and the MRAs developed under them result from negotiations between Canadian authorities and their foreign counterparts. More importantly, the Québec–France MRAs have now been applied for over a decade, providing valuable insight into both their strengths and weaknesses

(Houle & Doucet, 2016; Commissaire à l'admission aux professions, 2017). Professional authorities should therefore carefully examine these experiences to develop the best possible future MRAs, ones that promote not only professional mobility but also substantive equality of opportunity.

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