

THE ONTARIO HUMAN RIGHTS COMMISSION REMOVES THE “CANADIAN EXPERIENCE” BARRIER

— By Catherine Coulter. © Dentons Canada LLP.

On July 15th, the Ontario Human Rights Commission (“OHRC”) officially launched its new policy on “Removing the Canadian experience barrier”, which had been approved by the OHRC on February 1, 2013.

The OHRC’s position is that the common requirement for “Canadian experience” for immigrant job applicants is discriminatory on its face and can only be used in very limited circumstances. The onus will be on employers and regulatory bodies to show that a requirement for prior work experience in Canada is a *bona fide* requirement. In the words of the OHRC, “newcomers are in a very difficult position: they can’t get a job without Canadian experience and they can’t get Canadian experience without a job”. Everyone has a story about a qualified foreign doctor or engineer who has to drive a cab or work in a convenience store in Canada, and this policy is aimed at trying to do something about that problem.

While the policy is lengthy, it contains a helpful checklist of things that the OHRC believes employers and regulatory bodies should and should not do in order to ensure compliance with the policy. According to the Commission, the following are some of the things that employers and regulatory bodies should not do when advertising for or interviewing applicants:

- do not discount an applicant’s foreign work experience or assign it less weight than Canadian work experience;
- do not include a requirement for Canadian experience in job postings;
- do not include a requirement for qualifications that can only be obtained by working in Canada;
- do not require applicants to reveal where their work experience was obtained; and
- do not demand local references only.

Employers should keep in mind that in the event of a human rights complaint by job applicants, they may be required to demonstrate how and why the successful candidates were chosen. While this has always been the case with respect to defending claims of discrimination on the basis of prohibited grounds such as race, sex, sexual orientation, and the like, employers will now also have to demonstrate that Canadian experience was not a factor when deciding which applicant(s) to hire.

As an example of the above, the OHRC suggests that instead of asking whether applicants for accounting positions have Canadian CMA or CGA qualifications, they should only be asked whether they have general designated accounting qualifications. Once it has been determined that applicants have the necessary qualifications for the job, the OHRC suggests that they should be given the opportunity to show their abilities through interviews, reference checks, tests, or even in a simulated job setting. Similarly, the OHRC is of the view that this sort of process should be used for other jobs and other certification processes, even if it means that the hiring process or certification process becomes more onerous.

Closing

While the OHRC’s position on Canadian experience is only a policy and not law, it conforms with some Canadian case law which is already in existence. As a result, Ontario employers and regulatory bodies would be well served to read the policy and to be aware of the expectations being placed upon them by the OHRC. For more information, the entire policy can be reviewed at the OHRC’s website at www.ohrc.on.ca.