

Legislated Obligations and Fair Registration Best Practices Guide for Health Regulatory Colleges



FAIRNESS COMMISSIONER

COMMISSAIRE À L'ÉQUITÉ

**OFFICE OF THE FAIRNESS COMMISSIONER
BUREAU DU COMMISSAIRE À L'ÉQUITÉ**

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Legislated Obligations and Fair Registration Best Practices Guide for Health Regulatory Colleges

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I. Introduction

In this document, the Office of the Fairness Commissioner (OFC) is offering information and advice to health regulatory colleges (or health colleges) to assist them to:

- understand how the OFC will evaluate their compliance with the legal obligations contained in sections 22.1 to 22.11 in the Health Professions Procedural Code under Schedule 2 of *Regulated Health Professions Act, 1991* (RHPA or Code); and
- adopt associated best practices in their organizations.

In the event of any conflict between this resource document and any legislation, the provisions of the legislation prevail.

Ontario's fair access legislative framework is embodied in two provincial statutes. These are the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*

(FARPACTA) which governs 16 non-health regulated professions and Skilled Trades Ontario and the RHPA, which applies to the 26 self-governing health regulatory colleges. When FARPACTA came into effect in 2006, it also amended the RHPA by incorporating similar, though not identical, provisions into the Health Professions Procedural Code (Schedule 2).

The two legislative schemes are quite similar in nature. For example, both statutes impose a duty on regulators to provide registration practices that are transparent, objective, impartial and fair (section 6 in FARPACTA and section 22.2 in Schedule 2 of the RHPA) and provide the Fairness Commissioner with certain prescribed functions (section 13(3) in FARPACTA and section 22.5(1) in the RHPA). Other provisions are similar in nature but do not contain identical language. In still other cases, there are substantive differences in wording and one statute may contain obligations not found in the other.

What follows are some substantive differences relating to the Fairness Commissioner's order-writing authority, the treatment of appeals, timeliness requirements for registration decisions and the duty of the regulator to register an adequate number of trained professionals.

- Under sections 26 of FARPACTA, the Fairness Commissioner has the authority to issue compliance orders to a professional regulator. The commissioner does not exercise a similar mandate under the RHPA.
- However, under section 22.5(1)(h) of Schedule 2, the commissioner may provide advice and recommendations to the Minister of Health, including that a college do or refrain from doing any action respecting a contravention by a college if the commissioner determines that the college has failed to comply with any requirements under sections 22.2 to 22.11 of the RHPA.
- With respect to appeals, under section 21 of Schedule 2 of the RHPA, applicants who dispute an order of a health college's registration committee have the right to file an appeal with the independent Health Practices Appeal and Review Board (HPARB). By

contrast, FARPACTA does not provide for an appeal right to an arms-length tribunal. Rather, under section 9(1) of FARPACTA, a regulated profession is only required to provide an internal review or appeal within a reasonable time.

- Regarding timely decisions, under section 5(4) of Regulation 261/22 made under FARPACTA, which will come into effect on July 1, 2023, a regulated profession must provide internationally trained individuals with written communication of a registration decision, along with written reasons, within six months of the receipt of the application, along with any documentation that the regulator requires to make this decision. The regulator must meet this standard in 90% of all cases.
- Section 43(1) (h.0.1) of the RHPA, on the other hand, confers the authority on the Ministry of Health to require that the registrar and registration committee make registration decisions within a reasonable time. A regulation like the one made under FARPACTA, has not been enacted for the health regulatory colleges.
- Finally, section 2.1 of schedule 2 of the RHPA stipulates that “It is the duty of the College to work in consultation with the Minister to ensure, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals”. There is no analogous provision in FARPACTA.

Owing to the differences in the content of the two statutes, the OFC has determined that it would be more straightforward for readers if the OFC disseminated two separate *Legislated Obligations and Fair Registration Best Practices Guides*. This version focuses on the obligations of the health regulatory colleges as outlined by the relevant provisions of the RHPA. A separate document for the non-health regulated professions and compulsory trades may be found by clicking [Legislated Obligations and Best Practices Guide-Regulated Professions and Compulsory Trades](#).

The purpose of this guide is two-fold. It is designed to provide:

- health colleges with information and advice to more fully understand how to comply with their legal obligations under sections 22.2 through 22.11 of the Code; and
- OFC staff with a tool to help them assess the degree to which a health college is complying with these obligations.

In addition, the guide makes reference to the provisions of the Code (sections 2.1, 15, 16, 18, 20 and 86) that relate to the registration of applicants. While the authority for overseeing those provisions rests with the Ministry of Health, not the OFC, this content is included for the sake of completeness and because these requirements are interconnected with the fair access obligations laid out in sections 22.1 -22.11 of the Code. These materials are intended to provide a fair access lens through which health colleges can self-assess how well they are meeting these related obligations.

This guide replaces and supersedes several earlier OFC documents issued in 2016.¹ It should be read in conjunction with the OFC's modern regulator principles that were issued in April 2021, along with the companion risk-informed compliance framework. These documents, which can be found by clicking [OFC Compliance Resources](#), form the basis upon which the OFC will work with health regulatory colleges to improve registration outcomes for *all* applicants, including internationally trained individuals.

The OFC believes that these outcomes will be enhanced where health colleges implement modern and efficient processes, issue high quality, consistent and fair registration decisions, and commit to adopting best practices. The OFC believes that there are several key objectives that will define a health college's success in relation to creating a fair registration process. These include the average and maximum time required to issue registration decisions, and the percentage of internationally trained applicants who are successfully registered. These metrics are particularly important given the shortages of health care professionals in several key sectors of the province.

As indicated previously, the legal obligations that regulators must meet with respect to their registration processes are set out in Schedule 2 of the RHPA. The OFC shares responsibility for oversight, compliance, and enforcement of the obligations in sections 22.2 to 22.11 of the Schedule with the Ministry of Health.

In broad terms, the legal obligations, for which the OFC has such compliance oversight, can be thematically divided as follows:

1. The general duty of the health college to provide registration practices that are transparent, objective, impartial and fair.
2. Four specific duties that health colleges are required to fulfill that involve:
 - Providing information to applicants.
 - Specifying the documentation that applicants must provide to the health college to assess their qualifications and what alternatives may be acceptable.
 - Ensuring that assessment decisions made by the health college, or a third-party service provider, are transparent, objective, impartial and fair.
 - Providing training for individuals who make assessment and registration decisions.
3. Four review and reporting requirements that the Fairness Commissioner may require that a health college undertake that relate to:
 - Ensuring that its registration practices are transparent, objective, impartial and fair, to include the relevance and necessity of its registration requirements, the timeliness

¹ *Registration Practices Assessment Guide: For Regulated Professions and Health Regulatory Colleges* (March 2016) and *Registration Practices: Indicators and Sources: A Companion to the OFC's Registration Practices Assessment Guide* (March 2016).

of its registration decisions, and the reasonableness of fees that are charged to applicants.

- Compliance with sections 15 through 22.11 of Schedule 2 of the RHPA.
- The health college's periodic reporting obligations to the OFC via the Fair Registration Practices Report.
- Periodic audits that the Fairness Commissioner may order the health college to complete.

As stated earlier, there are provisions relevant to the registration process that are identified outside sections 22.2 to 22.11 of Schedule 2, where oversight responsibilities fall instead to the Ministry of Health. In order to provide health colleges with a comprehensive list of their legislative obligations, the guide references sections 2.1, 15, 16, 18, 20 and 86 of Schedule 2 and offers some related commentary.

As part of this *Legislated Obligations and Fair Registration Best Practices Guide* (the guide), the OFC will identify, as appropriate, the steps that it believes health colleges should take to fulfill these legal obligations. The key objective is to provide greater clarity to health colleges on how to comply with their legislative requirements.

In tandem with these legal obligations, this document also contains a companion list of fair registration best practices. The OFC believes that these approaches can materially improve the quality, timeliness and fairness of registration decisions and generally reflect excellent client-service principles.

The distinction between legal obligations and best practices is an important one. Health colleges are required to comply with legal obligations as a matter of law. The failure to do so may attract enforcement consequences. The list of legal obligations may be thought of as the core elements of a fair registration compliance framework. Best practices, on the other hand, represent approaches that health colleges can choose to adopt to further improve their service offerings and how they interact with applicants.

In that respect, the guide is designed to motivate health colleges to continually reflect on how they can incorporate the overarching principles of transparency, objectivity, impartiality, and fairness into their day-to-day registration practices. By adopting best practices, a health college can demonstrate leadership in its field and more fully embrace modern, forward-looking and fair registration processes.

It should also be noted that the selection and implementation of best practices will sometimes differ between health colleges based on the nature of their mandates and business processes, and the character of the professions for which they are responsible.

There are several further points to be made about these fair registration practices. First, while the OFC may suggest a certain pathway to achieve a desired result, it recognizes that each health college is subject to unique circumstances and that there may be different ways to achieve a particular goal. The OFC will, therefore, apply an appropriate level of flexibility and

discretion when conducting its assessments of registration practices. As a modern regulator, the OFC will tailor its assessment activities in a proportionate manner to focus on potential risks and opportunities to improve practices.

In this guide, the OFC will refer to certain statutory provisions, or use certain terminology to characterize its advice on how a health college should approach a particular fair registration obligation or practice. When the OFC utilizes the term “shall” or “must”, this will typically be associated with a legal obligation set out in a statute. These terms are associated with mandatory legal obligations.

When the OFC employs the term “should”, this constitutes the OFC’s advice that a particular approach or activity is desirable. However, such an activity would not be mandatory. Finally, the use of terms such as “may” or “can” would signal that a health college possesses a wider scope to adopt a particular piece of information or advice.

It is the OFC’s intention to keep this list of practices evergreen. The office plans to review the contents regularly to ensure that they remain current. The OFC views this collection as a common resource and invites regulators to help to keep these ideas timely, forward-looking and relevant.

While the OFC has authored this guide for certain defined purposes, stakeholders have indicated that it could also be employed for other objectives. For example, the document could also serve as a useful tool to orient new council members on the key responsibilities outlined in the legislation. It could also be employed as a self-assessment tool.

Please note that this resource has been prepared to assist health colleges to understand their obligations under sections 22.2 through 22.11 of the Code. It is not intended to replace the wording in those sections, and reference should always be made to the official version of the legislation.

It is the responsibility of health colleges to ensure that they comply with the legislation. This resource does not constitute legal advice. The OFC will exercise its authority under the Code based on the facts that are identified. This resource does not affect the OFC’s discretion for this authority in any way.

II. Organization of this Guide

This guide is organized into three parts. Part I offers an introduction and Part II explains how health colleges can apply this document to develop measures and procedures to meet their legislated obligations. The heart of the document, however, is found in Part III, which outlines the OFC’s information and advice with respect to legal obligations that apply to health colleges.

To make it easier to follow, Part III is organized around the four categories of legal obligations set out in Schedule 2 of the RHPA:

- The general duty.
- Specific duties regarding:
 - The provision of information to applicants.
 - The documentation that applicants must provide to the health college to assess their qualifications and what alternatives may be acceptable.
 - The assessment of candidate qualifications by either health colleges or third-party service providers.
 - The provision of training for individuals who make assessment and registration decisions.
- Reporting requirements.
- Other registration-related obligations.

To provide clarity for users of this guide, the OFC has also linked each legal obligation with the corresponding provision in the legislation. The guide then refers to the OFC's information and advice for each specific legislative provision. The document also includes information on how the OFC will assess whether, and to what extent, a health college has demonstrated compliance with the particular legal obligation. In that respect, the OFC will also outline the factors that it will consider in formulating its compliance determinations.

Each legal obligation is, in turn, accompanied by one or more recommended examples of how health colleges can achieve the required outcomes. The OFC also identifies a list of best practices to help health colleges achieve the general duties of transparency, objectivity, impartiality and fairness prescribed in the legislation.

The second section of Part III identifies the reporting requirements for health colleges associated with preparing and filing their Fair Registration Practices Reports. The content of this section sets out:

- the nature of the health college's specific legal obligations, with links to the relevant sections in the RHPA; and
- commentary on how the OFC will ascertain whether the regulator has met these obligations.

The third section of Part III articulates the legal obligations that a health college must fulfill should it become subject to an audit.

Section four identifies other RHPA requirements that fall outside the fair access provisions in Schedule 2 of the Act but that a health college must nonetheless meet when performing its functions related to the registration of individuals. The authority for overseeing these provisions

rests with the Ministry of Health. By including this content in the guide, the OFC will not supersede, or interfere with, this authority. These materials are provided for the sake of completeness and because these obligations are interconnected with the fair access obligations laid out by sections 22.1 -22.11 of the Code.

III. Legal Obligations under the Regulated Health Professions Act

1. Fair Registration Practices: General Duty.

According to section 22.2 of the RHPA, each health regulatory college:

“Has a duty to provide registration practices that are transparent, objective, impartial and fair”.

The legislation refers to this obligation as the general duty. The principles of transparency, objectivity, impartiality, and fairness are inherently broad in nature. In addition, there are no definitions outlined for them in the RHPA.

While the general duty constitutes an overarching legal obligation in its own right, the four nested principles also provide a philosophical underpinning and interpretative framework for applying the more specific duties contained in the legislation.

While the courts in Ontario have not had occasion to interpret these provisions in the context of fair access legislation, the OFC has historically defined these terms in a common sense and straightforward fashion. The discussion below is designed to convey the OFC’s current working definitions of these principles. These definitions should be considered as plain language interpretative aids.

Transparency:

To be transparent means that a health college’s instructions and guidelines must be clear, accurate and straightforward. This level of clarity is necessary to enable applicants to easily follow the required steps in the registration process. Transparency also demands information that can be easily understood with clear milestones to allow applicants to monitor their progress in completing the registration process.

Objectivity:

To be objective means that a health college’s tools, assessment criteria, procedures and training processes are designed to enhance the consistency of decision-making across applicants. Such results should be achieved regardless of the individual rendering the decision, the particular context and/or whether the determination is made by the health college

or a third-party service provider. The decision-making systems should also invest in well-trained and qualified adjudicators to promote sound, valid and reliable decisions.

Impartiality:

To be impartial means that a regulator must make its decisions through a process that is free of bias that, if present, could produce subjective or tainted assessments or decisions. Sources of bias could include actual or perceived conflict of interest, preconceived notions, or a lack of cultural competency. Each health college is responsible for identifying sources of bias and for taking appropriate steps to ensure impartiality, which would normally include enhanced training and procedures to follow where an issue of bias is suspected.

Fairness:

Fairness must sit at the heart of the registration process for applicants who wish to join a health profession. Fairness comprises several dimensions. It is often contextual in nature and not always amenable to precise definition. It can also overlap with the first three principles discussed.

At its core, fairness means that a health college needs to identify the steps necessary, and the documentation required, for a candidate to complete the registration process. The assessment must be rational and above-board, and not place unnecessary and ill-conceived obstacles in the way of success. Everyone should have the same prospects irrespective of their country of training or background. The process needs to be expedient. And there must be a chance for an arms-length review if the individual disagrees with a decision. Those running the processes should embrace their responsibilities with a spirit of purpose, wisdom and empathy.

2. Fair Registration Practices: Duties Relating to the Provision of Information to Applicants including Details about the Documentation that Must Accompany an Application, the Assessment of Applicant Qualifications and Training for Assessors.

Sections 22.3 and 22.4 of Schedule 2 of the RHPA set out more specific obligations that health colleges must meet to comply with their legislative requirements.

Obligation No.1: The Regulated Health College Shall Provide Information to Applicants on its Website about its Registration Requirements.

Section 22.3 of Schedule 2 of the RHPA reads as follows:

“The College shall provide information on its website with respect to the requirements for registration, the procedures for applying for registration and the amount of time that the registration process usually takes”.

How the OFC Will Ascertain whether the Health College Has Met Obligation No.1:

This list of statutory requirements is relatively straightforward. The key issue is whether the health college is providing the prescribed type of information to applicants on its website. To make its assessment, the OFC will obtain the necessary confirmation from a review of the website, other public information sources, and discussions with the health college.

Fair Registration Best Practices Related to Obligation No.1:

What follows are examples of how health colleges can further advance the spirit and intent of this obligation to provide for a superior client experience and better outcomes for all applicants.

- The information is organized on the college's website in a way that it is easy to find, written in plain language, and is complete and accurate.
- The information is available in the French language.
- The information is presented in accessible, or multiple, formats that are easy for applicants to retrieve and follow.
- The materials include information about the percentage of candidates from different jurisdictions who have been able to successfully complete the registration process in the last five years (This information is designed to make it easier for prospective applicants to make a risk-informed assessment on whether to seek to join a health profession in Ontario)
- The information informs applicants whom they may contact if they require further guidance.

Obligation No.2: The Health College Shall Provide Information to Applicants on what Documentation of Qualifications Must Accompany an Application.

Section 22.4 (1) of Schedule 2 of the RHPA reads as follows:

"The College shall make information publicly available on what documentation of qualifications must accompany an application and what alternatives may be acceptable to the College if an applicant cannot obtain the required documentation for reasons beyond his or her control".

How the OFC Will Ascertain whether the Health College Has Met Obligation No.2:

This is also a straightforward requirement. The OFC will seek information from the health college on how it communicates the identified information to individuals applying, or intending to apply, for membership in the health profession.

This inquiry would ordinarily include a review of the health college's website to confirm that the required information is available and easily accessible.

Fair Registration Best Practices Related to Obligation No.2:

What follows are examples of how health colleges can further advance the spirit and intent of this obligation to provide for a better experience and outcomes for all applicants:

- The information that the health college communicates to prospective applicants should identify the required:
 - *content* of the documents organized in an easy-to-follow format;
 - *format* of the documents, including the translation format, if applicable; and
 - *method* for sending the documents to the college.
- The information package should also explain how applicants can contact the college to explore other alternative documentation that may be acceptable beyond the examples that have been posted publicly. (This material would be particularly important where the applicant cannot obtain the required documentation for reasons beyond their control).
- The information should be available in the French language.
- The college should also allow the applicants to submit the documentation to it directly as opposed through intermediaries, with appropriate safeguards.

The OFC strongly encourages health colleges to take a fair and generous approach to accepting alternative documents in situations where the applicants will experience significant difficulties in obtaining these materials, and the registration of the applicants would not otherwise compromise the public interest.

Health colleges should, at all times, seek to facilitate the registration of competent applicants and not place unnecessary barriers in their paths.

Obligation No.3: The Health College Shall Assess Qualifications of Applicants in a Way that is Transparent, Objective, Impartial and Fair.

Section 22.4(2) of Schedule 2 of the RHPA reads as follows:

“If the College makes its own assessment of qualifications, it shall do so in a way that is transparent, objective, impartial and fair, and if it relies on a third party to assess qualifications, it shall take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair”.

How the OFC Will Ascertain whether the Health College has Met Obligation No.3:

The assessment of applicant qualifications can often form the most critical part of the registration process. Decisions about qualifications determine whether an individual may enter a profession, how quickly that process can occur and what additional steps, if any, the applicants must take to advance their application.

In assessing the qualification of applicants, many health colleges delegate components of this process to third-party service providers (“third parties”). Whether it is the health college or third party that conducts the assessment of qualifications, the legislation requires that the process be conducted in a transparent, objective, impartial and fair manner.

In addition, this provision requires that the health college take “reasonable measures” to ensure that the third party conducts the assessment in a way that is transparent, objective, impartial and fair. Note that the term “reasonable measures” is neither defined in the RHPA nor its regulations.

Section 22.5(1)(f) of Schedule 2 of the RHPA is also relevant to this discussion. This provision specifies that it is the function of the Fairness Commissioner to:

“monitor third parties relied upon by a College to assess the qualifications of individuals applying for registration by the College to help ensure that assessments are based on the obligations of the College under this Code and the regulations.”

While the OFC relies on this provision to obtain information from third parties and to broadly review their work, it will typically look to, and rely upon, regulators to fulfill their obligation under section 22.4(2) of Schedule 2 of the RHPA to “take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair”.

To explore whether the health college has met this obligation, the OFC will assess the regulator’s processes for the hallmarks of these attributes. The OFC will also seek information from the college about the measures it takes to hold its third-party service providers accountable for transparent, objective, impartial and fair assessments and to determine if these measures are reasonable and applied consistently.

For assessment methods undertaken by the college, itself, the OFC will review relevant information sources to verify:

- the connection or link between the assessment methods and the registration requirements or specific competencies that they are designed to measure;
- the measures that the health college takes to ensure that its assessment methods and criteria are methodically and psychometrically sound;
- how the health college ensures that only qualified assessors make the assessment decisions; and
- how the health college informs applicants about the assessment criteria, methods and results of the assessment.

Where the health college delegates any part of the assessment function to a third party, the OFC will request relevant materials that identify the measures that the health college takes to hold its third-party service providers accountable for assessments that are transparent, objective, impartial and fair, and to consider whether these measures are reasonable in the circumstances. The OFC will also solicit information on whether the health college has taken

reasonable measures to inform itself about the way that the third party undertakes its assessment processes.

While the legislation does not define what constitutes a transparent, objective, impartial or fair assessment, the OFC believes that the adoption of assessment practices listed below embody these four principles. Consequently, the OFC will consider these practices, among others, when determining compliance with this legislative obligation:

- the health college has established clear and objective criteria for making assessment and registration decisions, which are clearly documented and consistently followed;
- the health college only insists on reviewing hard to obtain documents where there is a strong, bona-fide rationale or justification to review them and where the public interest would not otherwise be compromised;
- the regulator recognizes international educational credentials unless there is evidence of *substantive differences* between those and Canadian credentials;
- the health college implements measures to help ensure that its assessments are valid, reliable and free from bias;
- the health college ensures that all individuals who assess qualifications, or make registration decisions, possess the relevant knowledge and skills, and receive adequate training; and
- the health college clearly documents its expectations to third-party service providers.

The OFC will especially wish to review documentation that links the assessment methods employed with the registration requirements or specific competencies necessary for entry-to-practice. This analysis may include a review of competency frameworks, blueprints and/or related documentation. The OFC would also consider any psychometric review that attests to the validity and reliability of the assessment method.

Similarly, the OFC will explore whether the health college has established any qualifications for its assessors and, if these exist, whether the regulator selects individuals in accordance with the skills necessary to do the required work. The OFC will also review how often and clearly the health college communicates with applicants to explain the nature of the assessment process to them.

Finally, the OFC will analyze the measures that the health college has put into place to hold third parties accountable, and whether these measures are reasonable.

The OFC recognizes that the context within which each third party provides assessment and testing services is unique. Consequently, it will take these considerations into account in determining whether the measures that the regulator has taken are reasonable in the circumstances. The OFC will consider the following factors:

- the nature of the assessment decisions made by the third party and the extent to which they influence the college's overall decision-making process;

- whether these decisions are binding on the regulator or whether the college retains the discretion to override them where considerations of fairness so dictate;
- whether the college has established service standards that stipulate the average and maximum timeframes for the provision of services by third parties to applicants and the associated reporting protocols where these standards have not been met;
- the extent to which the college exerts contractual control over material aspects of the third party's assessment methods or procedures;
- whether there is a contract in place between the health college and the third party that establishes service standards for the processing of applications and, if so, whether the agreement affords the college the necessary authority to rectify non-compliance with these standards where the circumstances so dictate;
- whether there is evidence that the third party's procedures have produced unfair or arbitrary assessments;
- whether the college has the capacity to verify how well the third party adheres to the agreed upon service standards; and
- whether the third party is subject to a recognized quality assurance framework.

Fair Registration Best Practices Related to Obligation No.3:

What follows are examples of how health college can further advance the spirit and intent of this obligation to provide for a better experience and outcomes for all applicants:

- To help applicants better understand the health college's assessment criteria, the regulator's registration materials for applicants should provide:
 - examples of scenarios and/or illustrations to explain the relevant assessment criteria and how an applicant's qualifications will be assessed against those factors;
 - information to help applicants better understand the potential outcomes of the assessment process;
 - information about the accommodation of special needs, which may include examples of situations where accommodations have been provided in the past; and
 - online self-assessment tools.
- To frame objective assessment decisions, the health college should:
 - express its assessment criteria in measurable units to minimize subjectivity in assessment decisions; and
 - establish specific scores or grading scales used in the assessment methods that measure competencies or performance.
- To speed the assessment process, the health college should encourage its third party to engage in parallel, as opposed to sequential, processing pathways (e.g., by not insisting

that all of an applicant's documentation be received before allowing the applicant to sit an examination).

- The health college should establish a process to periodically evaluate the educational programs it assesses to ensure that its criteria remain relevant and valid.
- The health college should document any potential sources of bias, and/or the circumstances that may compromise impartial assessment decisions and educate its assessors about these considerations.
- The health college should similarly ensure that the process through which an applicant can appeal the assessment of their qualifications is straightforward and that the fees do not exceed the cost of reasonable cost recovery.
- If there a potential for a delay in scheduling assessment appointments or making assessment decisions, the health college should establish procedures to inform applicants about these delays and provide estimated scheduling/decision dates.
- With respect to third-party service providers, the health college should ensure that:
 - the examination protocols employed by its third-party service providers are subject to periodic psychometric testing;
 - it considers the periodic re-tendering of third-party service assignments as a way to ensure that it is receiving the highest quality services in the most cost effective fashion;
 - it regularly reviews, and refreshes, its memoranda of understanding or agreements with its third parties to ensure that the necessary accountability provisions are in place and that the fees charged to applicants are reasonable;
 - the agreements that it enters into with third parties address such issues as the protection of personal information and appropriate cyber-security measures;
 - in conjunction with its third parties, it establishes robust protocols to communicate with applicants in situations where assessment or examination schedules are disrupted;
 - where it requires clinical examinations for registration purposes, its third party is taking reasonable steps to develop virtual, in addition to, paper-based testing options; and
 - there is a mechanism in place to resolve disputes where the contents of an agreement between a health college and a pan-Canadian assessment or testing agency may be inconsistent with the provisions of the RHPA.

Obligation No.4: The Health College Shall Ensure that Training is Provided to the Individuals Assessing Qualifications and Making Registration, or Internal Review or Appeal Decisions.

Section 22.4(3) of Schedule 2 of the RHPA reads as follows:

“The College shall ensure that individuals assessing qualifications and making registration decisions or reviewing decisions have received training that includes, where appropriate,

(a) training on how to assess such qualifications and make such decisions; and

(b) training in any special considerations that may apply in the assessment of applications and the process for applying those considerations”.

How the OFC Will Ascertain whether the Health College has Met Obligation No.4:

The individuals who make assessment, registration, or review decisions are exercising important authorities that will often have significant consequences for applicants. It is important, therefore, that they possess the skills and knowledge necessary to correctly analyse individual situations and to exercise their judgment in a fair and consistent manner.

It is also critical that these decision-makers possess an appropriate level of cultural competency since that they will regularly deal with internationally trained applicants from a broad array of countries and with distinct educational backgrounds and work experiences.

In order to ascertain whether a health college has met this obligation, the OFC will seek information from the regulator on the training that it provides to decision makers and confirm that the required training topics required to comply with section 22.4(3) of Schedule 2 of the RHPA have been appropriately addressed.

This inquiry would ordinarily include a review of relevant documentation, including an assessment of orientation and initial training materials for new members undertaking this work and the nature of continuing professional development.

In more particular terms, the OFC will seek confirmation that the following topics have been addressed in the relevant training materials:

- how to assess qualifications, and to issue clear, concise, coherent and easy-to-understand decisions;
- the objectives of fair access legislation and the four guiding principles;
- cultural competency; and
- how to issue impartial and objective decisions in the context of assessment, registration and decision-review processes.

Fair Registration Best Practices Related to Obligation No.4:

What follows are examples of how health colleges can further advance the spirit and intent of this obligation to provide for a better experience and outcomes for all applicants:

- the college should pair experienced decision-makers with individuals who are new to the role;
- the college should provide opportunities to discuss difficult cases, while ensuring that the presiding member(s) retains authority to make the final decision;
- the college should ensure that individuals who assume this work understand their role and can exercise their functions independently and in an objective and arms-length fashion; and
- the college should retain a trusted expert, with legal and adjudication expertise, to periodically review its training materials and to provide input on how they could be improved substantively and from the perspective of procedural fairness.

The OFC will shortly begin consultations on creating an inclusion and anti-racism lens to help health colleges make culturally competent registration decision. Once this work is completed, this section will be updated.

3. Review and Reporting Requirements Involving the Provision of Reports.

Requirement No.1: The Health College Shall Undertake a Review of its Registration Practices at Such Times as the Fairness Commissioner May Specify to Ensure that they Are Transparent, Objective, Impartial and Fair.

Section 22.6 of Schedule 2 of the RHPA reads as follows:

- 1) *The College shall undertake reviews of its registration practices at such times as the Fairness Commissioner may specify to ensure that the registration practices are transparent, objective, impartial and fair.*
- 2) *The review shall include an analysis of,*
 - a. *the extent to which the requirements for registration are necessary for or relevant to the practice of the profession;*
 - b. *the efficiency and timeliness of decision-making; and*
 - c. *the reasonableness of the fees charged by the College in respect of applications.*
- 3) *The College shall file a copy of the results of the review with the Fairness Commissioner within 30 days after the completion of the review”.*

How the OFC Will Ascertain whether the Health College Has Met Reporting Requirement No.1:

As part of their duties, the Fairness Commissioner (the commissioner) may require that a regulator undertake a review of its registration practices to ensure that they are transparent, objective, impartial and fair. While the commissioner can specify the scope of this review it must, at a minimum, stipulate an analysis of (a) the extent to which the requirements for registration are necessary for, or relevant to, the practice of the profession, (b) the efficiency and timeliness of decision-making, and (c) the reasonableness of the fees charged by the regulated health profession in respect of registrations.

This provision underscores the point that regulators must adopt registration practices that are transparent, objective, impartial and fair. In general terms, the Fairness Commissioner will require that such a review be undertaken to address registration issues and/or complaints of a systemic nature or where a regulator has failed to take reasonable steps to address a material and/or longstanding registration matter.

As mentioned previously, these section 22.6 reports must address, at a minimum, three specific issues, which will now be considered individually.

(a) The Extent to Which the Requirements for Registration Are Necessary for, or Relevant to, the Practice of the Profession.

As part of the registration process, health colleges will typically identify the qualifications that applicants must possess, attributes of good character / suitability to practice, and the documentation that the applicants must provide to validate these credentials. The necessary qualifications, in turn, would most often include:

- academic credentials;
- evidence of language proficiency;
- practical (workplace) or clinical experience;
- successful completion of registration examinations;
- other forms of competency assessments; and
- criminal records checks.

Some of these requirements may be found in a profession's governing statute or regulations. In other cases, the regulator may set these out in its bylaws and/or policies.

Regulators establish those requirements to ascertain which applicants for registration are qualified to practice in the regulated health profession. To this end, it is important that the requirements are, in the words of the statute, "necessary for or relevant to the practice of the profession".

When reviewing the registration requirements for necessity and relevance, the OFC will consider the following factors:

- the rationale that the regulator has put forward to justify these requirements;

- whether the requirements are reasonable proxies for the individual's capacity or competencies to practice the profession;
- whether the requirements produce unintended or differential impacts on internationally trained applicants or other applicant groups; and
- whether there are practical alternatives to the requirements or the methods of assessment.

Fair Registration Best Practices Related to Relevancy and Necessity of the Requirements for Registration:

What follows are examples of how regulators can further advance the spirit and intent of this requirement to provide for a better experience and outcomes for all applicants.

In assessing whether its registration requirements are necessary to, and relevant for, the practice of a profession, a regulator could undertake a self-assessment of its processes by:

- matching its registration requirements to the competencies necessary to practice the profession;
- linking each current assessment method to the corresponding registration requirement or competency required for entry-to-practice;
- analyzing the results to determine whether there exist any overlaps and/or gaps; and
- assessing whether there are alternate modalities through which these competencies could be demonstrated in a way that preserves the public interest.

(b) The Efficiency and Timeliness of Decision-Making.

A critical component of a fair registration process involves the time that it takes a regulator to make its registration decisions. This feature of timeliness depends on how effectively the regulator can control the various inputs and elements of its registration process.

While a regulator can most directly control steps within its ambit (such as the efficiency of its registration committee), in other cases, third-party service providers may control inputs into the process. In these scenarios, regulators are responsible for ensuring that the third party undertakes its work in a timely fashion.

In still other cases, it is the applicants, themselves, who will be responsible for ensuring that they take timely steps to initiate, and progress through, the registration process expeditiously (e.g., by providing the necessary documentation).

The OFC recognizes that the nature of a regulator's registration process may, to some extent, be unique and, therefore, the steps and timelines required to complete the required processes may vary.

In general terms, the OFC's inquiries will focus on a determination of the reasonableness of the relevant time frames and on the discrete elements of the decision-making process.

More specifically, when reviewing the efficiency and timeliness of a regulator's decision-making process, the OFC will take into account the following considerations:

- whether the regulator has developed both average and maximum time standards to process the great majority of its caseload;
- whether the regulator applies a client-centred lens in calculating total timelines by including the time that an applicant spends in obtaining required assessment, equivalency and testing services from a third-party service provider;
- whether the regulator regularly measures its performance against these time standards and reports the results to its council and the public;
- whether the regulator periodically reviews its registration processes to identify gaps, bottlenecks and inefficiencies;
- whether the registration procedures and associated resourcing potentially favour one group of applicants over another (e.g., domestically trained versus internationally trained applicants);
- how the regulator justifies the need for the time that it requires to issue decisions and whether the explanation is reasonable;
- the extent to which unnecessary conditions or burdens may be imposed on the processing of applications from internationally trained individuals;
- documentation of any improvement in timeliness of decision-making over the last few cycles;
- comparisons to performance standards and results achieved by regulators that are similarly situated;
- broad trends in applicant complaints;
- whether staff or members involved in the registration process are properly trained and can devote the time and energy necessary to superintend this work in a professional fashion;
- whether staffing levels are appropriate to efficiently process case volumes; and
- how the regulator's performance compares with similarly situated regulators.

Fair Registration Best Practices Related to the Timeliness of Decision-Making:

What follows are examples of how regulators can further advance the spirit and intent of this requirement to provide for a better experience and outcomes for all applicants:

In assessing whether its decision-making is timely and efficient, a regulator could assess its processes in the following manner:

- identify the registration steps over which the regulator and its third-party service providers exercise control and establish time standards for each of these steps;
- ascertain the average time taken for applicants to move through each of these steps, considering both mean and median time frames and the treatment of outlier cases;
- determine how these measurements may have changed over time;
- consider whether there are any bottlenecks in the system and whether adequate resources have been allocated to discrete aspects of the registration process and the system as a whole;
- identify opportunities for streamlining registration procedures without compromising service quality (e.g., adopting parallel, as opposed to sequential, registration processes);
- inform applicants about estimated dates for providing responses, decisions and reasons when unavoidable delays have occurred;
- implement formal procedures to measure the health college's performance against its own timelines and/or service standards;
- periodically review the college's service standards and timelines to verify that they remain reasonable and to identify opportunities to enhance efficiency; and
- provide resulting recommendations to senior management and council.

(c) Reasonableness of the Fees Charged by the Health College In Respect of Registrations.

Both regulators and third-party service providers will typically charge fees for the services that form part of the registration process. The total fees that applicants will be expected to pay will depend on the number of steps required for registration and the fee schedules that service providers apply.

When assessing whether the fees that a regulator charges are reasonable, the OFC will take into account the following considerations:

- the rationale for setting the fee amounts;
- how the fees relate to the cost of providing the services;
- how the fees charged compare with those administered by regulators that are similarly situated;
- whether the regulator has explored opportunities to downwardly adjust fees and acted upon the findings of these reviews; and
- whether the quantum of fees pose a potential hardship for qualified applicants and whether the regulator has adopted a fee waiver policy to reduce or eliminate these fees in appropriate circumstances.

Fair Registration Best Practices Related to the Reasonableness of Fees:

What follows are examples of how regulators can further advance the spirit and intent of this obligation to provide for a better experience and outcomes for all applicants:

- The regulator should conduct periodic reviews of its fee schedule to help ensure that costing assumptions remain valid.
- The regulator should consult with organizations representing applicants and other stakeholders when initially setting fees and periodically adjusting them.
- The regulator could similarly apply an inclusion lens in setting fees by conducting an impact analysis that involves ascertaining the effects of fees on various applicant groups (e.g., domestic versus internationally trained applicants). If these effects are found to be substantial, the regulator could introduce different fee scales or, based on evidence of need, decide to reduce, defer or waive fees for applicants in appropriate circumstances.

Requirement No.2: The Health College Shall Provide a Report or Information at the Request of the Fairness Commissioner on its Compliance with Sections 15 to 22.11 of Schedule 2 of the RHPA.

Sections 22.7(3) and 22.7(4) of Schedule 2 of the RHPA read as follows:

(3) The Fairness Commissioner may require that the College provide the Fairness Commissioner with reports or information relating to the College's compliance with sections 15 to 22.11 and the regulations and the College shall prepare and file the reports with, or provide the information to, the Fairness Commissioner.

(4) Reports and information required under subsection (3) are in addition to the reports required under subsection (1) and section 22.8".

It is important to note that section 22.7(3) authorizes the Fairness Commissioner to require that regulators prepare reports outside the scope of the legislative provisions over which the OFC has direct oversight (i.e., sections 21.1 to 22.11). Thus, the commissioner would have the authority to solicit reports on such topics as registrar decisions (sections 15 and 16), the review of registration decisions (sections 17 and 18), the variation of a previous registration decision (section 19) and the content of notices (section 20).

How the OFC Will Ascertain whether the Health College has Met Reporting Requirement No.2:

Whereas section 22.6 of Schedule 2 of the RHPA requires that a regulator undertake a review of its registration practices to ensure that they are transparent, objective, impartial and fair, sections 22.7 (3) and (4) focus on compliance with sections 15 through 22.11.

In general terms, the OFC would rely on section 22.7(3) and (4) where it has identified issues relating to a health college's non-compliance with its legal obligations that are serious, pervasive or longstanding in nature.

Requirement No.3: The Health College Shall Prepare and File a Fair Registration Practices Report at Such Times Specified by the Fairness Commissioner.

Sections 22.7 (1) and (2) of Schedule 2 of the RHPA read as follows:

- (1) The College shall prepare a fair registration practices report annually or at such other times as the Fairness Commissioner may specify*
- (2) The College may combine its fair registration practices report with such other report of the College as the Fairness Commissioner may permit and in such case an audit shall be confined to those parts of the report that relate to registration practices.*

How the OFC Will Ascertain whether the Health College has Met its Reporting Requirement No.3:

Historically, the OFC has specified the discrete questions to be responded to in its Fair Registration Practices (FRP) Report. To ascertain whether a regulator has met this reporting requirement, the OFC will review the completed document to ensure that it has been prepared thoughtfully and responds fully to the questions that have been posed.

The questions that will form part of the FRP reports will be refreshed periodically to ensure that they remain relevant and aligned with the OFCs new risk-informed compliance framework, new legislative and regulatory amendments, and broader system-wide improvement goals.

Under section 22.9 of Schedule 2 of the RHPA:

- (1) The College shall file its fair registration practices reports with the Fairness Commissioner by the dates specified by the Fairness Commissioner.*
- (2) The College shall make reports filed under subsection (1) available to the public.*

Subsection (2) is an important transparency provision which, among other things, obliges regulators to make their FRP reports available to the public.

Section 22.10 under Schedule 2 of the RHPA imposes additional requirements on regulators when they provide reports to the OFC. This provision specifies that:

- (1) Reports and certificates required by sections 22.7 and 22.8 and under the regulations shall be in the form and contain the information specified by the Fairness Commissioner or as may be specified in the regulations*

(2) Despite subsection (1), no report prepared by the College, the Fairness Commissioner or an auditor under sections 22.6 to 22.8 shall contain personal information”.

Requirement No.4: The Process for Completing Audits.

The authority of the Fairness Commissioner to require that health colleges undergo audits is set out in section 22.8 of Schedule 2 of the RHPA and reads as follows:

- 1) *Every three years or at such other times as the Fairness Commissioner may specify, the Fairness Commissioner shall give notice to the College that an audit must be conducted in respect of its registration practices and of its compliance with this Code and the regulations.*
- 2) *The Fairness Commissioner shall give the notice required by subsection (1) at least 90 days before the audit is to begin and the notice shall state,*
 - a) *that College must choose and appoint an auditor from the roster established by the Fairness Commissioner by the date specified in the notice;*
 - b) *that if College fails to choose and appoint an auditor by the date specified in the notice that the Fairness Commissioner will choose the auditor;*
 - c) *the scope of the audit and the audit standards that will apply;*
 - d) *the date by which the audit must be completed; and*
 - e) *that the College is responsible for the payment the auditor’s fees and expenses.*
- 3) *The College shall, by the date specified in the notice, choose and appoint an auditor from the roster established by the Fairness Commissioner and notify the Fairness Commissioner of its choice.*
- 4) *If the College fails to notify the Fairness Commissioner of the name of the auditor it has chosen and appointed by the date specified in the notice, the Fairness Commissioner shall choose the auditor and notify the College of his or her choice and the auditor shall be deemed to have been appointed by the College.*
- 5) *The auditor chosen and appointed under subsection (3) or (4) shall begin the audit promptly, shall conduct it in accordance with the scope of the audit and the audit standards set out in the notice under subsection (2) and shall complete the audit by the date set out in the notice.*
- 6) *An auditor may collect personal information, directly or indirectly, only for the purpose of an audit required under this section, but an auditor shall not retain any personal information after completing the audit and shall not include any personal information in any draft report or final report submitted in accordance with this section.*
- 7) *A College shall co-operate with the auditor and shall,*
 - a) *produce such records for, and provide such other information to, the auditor regarding its registration practices and any other matters related to compliance by the College with its obligations under sections 15 to 22.11 and the regulations as are reasonably necessary for the auditor to perform his or her duties under this Code, including any*

*reports required from the College under section 22.6, 22.7 or 22.9 or the regulations;
and*

- b) provide the auditor with any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a record in readable form.*
- 8) Despite subsection (7), a College may refuse access to a record if,
 - a) the record or any information in the record is subject to a legal privilege that restricts disclosure of the record or the information; or*
 - b) an Act of Ontario or of Canada or a court order prohibits disclosure of the record or any information in the record in the circumstances.**
- 9) The auditor shall prepare a draft report on the audit and provide a copy of it to the College, together with a notice that the College may, within 30 days, make submissions to the auditor on the draft report.*
- 10) The auditor shall consider the submissions, if any, made by the College and may make any changes the auditor considers appropriate before finalizing the report.*
- 11) The auditor shall make a final report on the audit and shall file it with the Fairness Commissioner and provide a copy to the College to which the audit relates.*
- 12) The auditor shall file a certificate with the Fairness Commissioner certifying that the auditor made the audit in accordance with this Act and the regulations and that he or she has provided a copy of the auditor's report to the College.*
- 13) An audit is complete when the auditor has provided a copy of the final report to the College to which the audit relates and has filed with the Fairness Commissioner the final report and the certificate referred to in subsection (12) and, if the College made submissions to the auditor on the draft report, a copy of the submissions made by the College.*
- 14) The Fairness Commissioner shall provide the Minister of Health and Long-Term Care with a copy of all auditors' reports within a reasonable time after receiving them.*
- 15) The College shall pay the auditor's fees and expenses.*

The OFC equates the audit function to an independent investigation undertaken by a third party whose credentials the OFC approves. The auditor will be required to produce a report with findings and recommendations. Under the legislation, the cost of the audit is borne by the health college and the final report must be filed with the OFC and the Minister of Health.

Where the OFC determines that an audit is required, it will typically have acquired a firm understanding of the situations where a health college has not achieved compliance with the legislation. On this basis, the OFC will usually employ an audit to undertake a defined and targeted review of material and persistent deficiencies identified in a regulator's registration processes.

Given the significant nature, cost and intrusiveness of the audit authority, the OFC will apply this tool following a review of all other options and only where the circumstances so warrant.

4. Other Regulated Health Professions Act Requirements Relating to Registration.

Under the RHPA's legislative scheme, the OFC oversees compliance with a number of legal obligations outlined in sections 22.2 through 22.11 of Schedule 2 of the statute. There are, however, several additional provisions contained in Schedule 2 which address the rights of applicants, and the obligations of health colleges.

While the authority for overseeing those provisions rests with the Ministry of Health, the OFC believes that they should be referenced in this document both for the sake of completeness and because they are associated with the OFC's direct compliance obligations. These materials also provide a fair access lens through which health colleges can self-assess the adequacy of their procedures arising out of sections 2.1, 15, 16, 18, 20 and 86 of Schedule 2.

In the sections that follow, and depending on the context, it could be the Ministry of Health, the college's council or senior management in the college that undertakes this review and oversight role.

RHPA Requirement No.1: The Health College's Duty to Ensure that the People of Ontario have Access to Adequate Numbers of Qualified, Skilled and Competent Regulated Health Professionals.

As part of their self-regulatory responsibilities, health colleges are required to uphold the public interest. Both regulators and the government can be said to share the public interest space.

One definition of "public interest" is "the welfare and well-being of the general public." Based on their statutory mandates, regulated health colleges have generally equated this concept with safeguarding public health and safety.

Section 2.1 of Schedule 2 of the RHPA makes it clear, however, that health colleges must also fulfill certain labour-market imperatives as part of their public-interest mandate. This provision reads as follows:

"It is the duty of the College to work in consultation with the Minister [of Health] to ensure, as a matter of public interest, that the people of Ontario have access to *adequate numbers* of qualified, skilled and competent regulated health professionals. [emphasis added]

To achieve this important objective, health colleges need to implement fair and efficient registration processes. They should focus on eliminating barriers that unnecessarily prolong assessment and registration processes and take whatever steps are necessary to move qualified applicants through the system in a prompt fashion.

In addition, health colleges should have an eye on the supply and demand characteristics of their professions and, in tandem with other stakeholders, work towards meeting labour market

targets so that Ontarians will have access to an ample supply of trained and competent health practitioners. A further discussion of the term “public interest” and the OFC’s perspective on this concept can be found in the [July 2021 Newsletter](#).

RHPA Requirement No 2: The Right of Applicants to Use the French Language in their Dealings with Health Colleges.

Section 86 of Schedule 2 of the RHPA identifies the obligations of health colleges with respect to the provision of French language services. This section read as follows:

- (1) *A person has the right to use French in all dealings with the College.*
 - (1.1) *The College shall identify and record the language preference of each College member and identify the language preference of each member of the public who has dealings with the College.*
- (2) *The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College.*
- (3) *In this section,*

“dealings” means any service or procedure available to the public or to members and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews.
- (4) *A person’s right under subsection (1) is subject to the limits that are reasonable in the circumstances”.*

Fair Registration Best Practices Related to This Requirement:

- Regulators should institute concrete plans to ensure that applicants have reasonable access to French language service relating to all aspects of the registration process, including:
 - providing registration information in French;
 - accepting of French-language documents without requiring English-language translations for them;
 - providing opportunities for taking examinations in French;
 - making internal reviews and/or appeals available in French.
 - providing resources and applicant supports in French

RHPA Requirement No.3: The Authority of the Registrar when Considering an Individual's Application to Join a Regulated Health Profession.

Section 15 of schedule 2 of the RHPA reads as follows:

- 1) *If a person applies to the Registrar for registration, the Registrar shall,*
 - a) *register the applicant; or*
 - b) *refer the application to the Registration Committee. 1991, c. 18, Sched. 2, s. 15 (1).*
- 2) The Registrar shall refer an application for registration to the Registration Committee if the Registrar,
 - a) *has doubts, on reasonable grounds, about whether the applicant fulfils the registration requirements;*
 - b) *is of the opinion that terms, conditions or limitations should be imposed on a certificate of registration of the applicant and the applicant is an individual described in subsection 22.18 (1);*
 - c) *is of the opinion that terms, conditions or limitations should be imposed on a certificate of registration of the applicant and the applicant does not consent to the imposition; or*
 - d) *proposes to refuse the application.*
- 3) *If the Registrar refers an application to the Registration Committee, he or she shall give the applicant notice of the statutory grounds for the referral and of the applicant's right to make written submissions under subsection 18 (1).*
- 4) *If the Registrar is of the opinion that a certificate of registration should be issued to an applicant with terms, conditions or limitations imposed and the applicant consents to the imposition, the Registrar may do so with the approval of a panel of the Registration Committee selected by the chair for the purpose.*
- 5) *Subsections 17 (2) and (3) apply with respect to the panel mentioned in subsection (4).*

Section 15 outlines the responsibilities of a health college's registrar when considering an application to join a regulated health profession. The registrar has the discretion to register the applicant or to refer the application to a panel of the health college's registration committee in certain circumstances. When the registrar chooses to make the referral, they must give the applicant notice of the statutory grounds for the referral and of the applicant's right to make written submissions under subsection 18(1) of schedule 2.

Fair Registration Best Practices Related to This Requirement:

It is important that health colleges periodically self-assess their registration practices to verify that they remain in compliance with their legal obligations. With respect to the role of the registrar, it would be useful to periodically evaluate the policies that the college has put in place to structure the registrar's application of discretion in these cases, as well as the thoroughness of the notices that the registrar provides to applicants.

There would be similar merit in reviewing the terms, conditions or limitations that the registrar typically imposes on applicants to ascertain whether they appear to be proportionate and do not serve as barriers to registration.

It would also be important to explore (a) the consistency of decisions made by the registrar across candidates who are similarly situated and (b) whether the registrar is consistently applying the advice and direction provided by the HPARB tribunal to their decisions. It should also be noted that, to an extent, registration decisions are accounted for in the Ministry of Health's College Performance Measurement Framework.

As a best practice, health colleges should also seek to achieve a decision-making mindset that is flexible and fair and that is geared towards finding pathways to registration for candidates with the potential to contribute to the profession and to the clients that they serve.

RHPA Requirement No. 4: The Right of an Applicant to Request that a Panel of the Health College's Registration Committee Conduct a Review of the Registrar's Decision and the Authority of the Panel to Direct that the Registrar Take Certain Actions.

Section 18 of Schedule 2 of the RHPA reads as follows:

- 1) *An applicant may make written submissions to the panel within thirty days after receiving notice under subsection 15 (3) or within any longer period the Registrar may specify in the notice.*
- 2) *After considering the application and the submissions, the panel may make an order doing any one or more of the following:*
 - a) *Directing the Registrar to issue a certificate of registration.*
 - b) *Directing the Registrar to issue a certificate of registration if the applicant successfully completes examinations set or approved by the panel.*
 - c) *Directing the Registrar to issue a certificate of registration if the applicant successfully completes additional training specified by the panel.*
 - d) *Directing the Registrar to impose specified terms, conditions and limitations on a certificate of registration of the applicant and specifying a limitation on the applicant's right to apply under subsection 19 (1).*
 - e) *Directing the Registrar to refuse to issue a certificate of registration.*
- 3) *A panel, in making an order under subsection (2), may direct the Registrar to issue a certificate of registration to an applicant who does not meet a registration requirement unless the requirement is prescribed as a non-exemptible requirement.*
- 4) *The panel may, with the consent of the applicant, direct the Registrar to issue a certificate of registration with the terms, conditions and limitations specified by the panel imposed.*

Section 18(1) outlines the process through which applicants may request that a panel of a health college's registration committee review a registrar's decision. It then gives the panel authority to provide certain directions to the registrar based on the submissions that the applicant provides.

Fair Registration Best Practices Related to This Requirement:

In assessing the adequacy of their section 18 procedures, health colleges should review the policies that they have put in place to structure the panel's review process along with evidence of the intelligent application of discretion in these cases. It would also be useful to review the terms, conditions, or limitations that registration committee panels typically impose on candidates to ascertain whether they appear to be proportionate and do not serve as barriers to registration.

It would also be important to explore (1) the consistency of the decisions that registration committees make across applicants who are similarly situated, (2) the number of appeals from registration committee decisions that prospective registrants take to HPARB, (3) the disposition of these appeals and (4) whether the registration committee is applying the advice and direction provided by the HPARB tribunal in its decisions.

What follows are further examples of how health colleges can advance the spirit and intent of this requirement to provide for a better experience and outcomes for all applicants:

- the health college puts formal procedures in place to measure its performance against its identified service standards and publishes the results;
- the health college provides information to applicants about how to make effective submissions and the formats in which such representations can be made (i.e., orally, in writing or by electronic means);
- the extent to which the health college safeguards impartiality of its internal review decisions by:
 - following well-documented procedures;
 - basing its decisions exclusively on relevant criteria and evidence;
 - informing decision-makers involved in internal reviews about potential sources of bias and the steps that they should take if they feel that they cannot review a case impartially; and
 - engaging legal counsel to periodically review the regulator's review and appeals processes.
- If a hearing by a registration committee panel is required, the health college provides reasonable accommodation to allow applicants to effectively participate in the process.

As a further best practice, the health college should promote a decision-making mindset that is flexible and fair, and that is geared towards finding pathways to registration for candidates with the potential to contribute to the profession and the clients that they serve.

RHPA Requirement No. 5: The Requirement that a Panel of the Registration Committee Provide Notification to an Applicant of its Order and Related Issues.

Section 20 of Schedule 2 of the RHPA reads as follows:

- 1) *A panel shall give the applicant notice of an order it makes under subsection 18 (2) or 19 (6) and written reasons for it if the order,*
 - a) *directs the Registrar to refuse to issue a certificate of registration;*
 - b) *directs the Registrar to issue a certificate of registration if the applicant successfully completes examinations or additional training;*
 - c) *directs the Registrar to impose terms, conditions and limitations on a certificate of registration of the applicant; or*
 - d) *refuses an application for an order removing or modifying any term, condition or limitation imposed on a certificate of registration.*
- 2) *A notice under subsection (1) shall inform the applicant of the order and of the provisions of section 19 and of subsections 21 (1) and (2).*

Section 20 outlines the order making authority of a panel of a registration committee. It stipulates that a panel must provide an applicant with notice of an order that it makes and, in certain defined circumstances where an order adversely affects the interests of an applicant, written reasons for the decision. The section also requires that the panel advise the applicants of their right to file appeals with the independent Health Professions Appeals and Review Board (HPARB).

Fair Registration Best Practices Related to This Requirement:

As part of this work, health colleges should seek to verify the quality and timeliness of the orders that their panels issue and whether they are written in a straightforward and easy to understand format. It is particularly important that the reasons carefully explain the basis for the panel's decision and allow the applicant to understand the case that the individual must meet should they wish to file an appeal. This information could ordinarily be gleaned through a review of a sample of orders that the panels have issued.

It would also be important for the health college to convey full and accurate information to the applicants about the nature and sequencing of the HPARB proceedings and how to prepare for a review of the documentary evidence or a hearing of the application. The goal should be to assist the applicant in determining whether to launch an appeal.

It is also a best practice for health colleges to periodically engage legal counsel with expertise in adjudication matters to provide input and advice on how to craft orders that meet the above objectives.

RHPA Requirement No 6: The Requirement that the Health College Provide Applicants with Access to their Records.

Section 16 of RHPA reads as follows:

- (1) The Registrar shall give an applicant for registration, at his or her request, all the information and a copy of each document the College has that is relevant to the application.*
- (2) The Registrar may refuse to give an applicant anything that may, in the Registrar's opinion, jeopardize the safety of any person.*
- (3) The Registrar shall establish a process for the purposes of dealing with an applicant's request under subsection (1).*
- (4) The Registrar may require an applicant to pay a fee for making information and documents available to the applicant if the Registrar first gives the applicant an estimate of the fee.*
- (5) The amount of the fee shall not exceed the amount of reasonable cost recovery*
- (6) The Registrar may waive the payment of all or any part of the fee that an applicant is required to pay under subsection (4) if, in the Registrar's opinion, it is fair and equitable to do so.*

This provision is designed to provide transparency to applicants about the process that the health college has followed to review the candidate's registration application. Under this section, the registrar, upon request, is required to provide a copy to the applicant of each document in the college's possession that is relevant to the application. This obligation is subject to a public safety exemption. The provision also enables the college to charge fees for this service and to waive them in appropriate circumstances.

This provision also buttresses procedural fairness in that it allows applicants to know the case that they must meet in order to seek redress from the decision made (or one that has been delayed).

Fair Registration Best Practices Related to This Requirement:

Each health college should periodically assess its disclosure and fee charging practices to ensure that they remain compliant with the legislation.

What follows are examples of how health colleges can further advance the spirit and intent of this requirement to provide for a better experience and outcomes for all applicants:

- The college informs applicants at the beginning of the registration process of their right to access their records and the circumstances under which access to records will be provided.
- Where appropriate, the college provides context around any records that are provided to the applicant and offers the individual a contact person should they have any further questions.
- The college provides clear direction to staff that:
 - identifies the specific documents that would typically form part of an applicant's records package;
 - outlines the procedures to apply when addressing an applicant's records request;
 - includes guidelines on the situations where certain documents contained in a records package may be withheld from disclosure;
 - establishes timelines or service standards for providing such access; and
 - makes legal counsel available to staff to address any contentious issues.



FAIRNESS COMMISSIONER

COMMISSAIRE À L'ÉQUITÉ

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