



Legislated Obligations and Fair Registration Best Practices Guide for Regulated Professions and Compulsory Trades

Date: December 2021



FAIRNESS COMMISSIONER

COMMISSAIRE À L'ÉQUITÉ

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

An agency of the Government of Ontario
Un organisme du gouvernement de l'Ontario

Effective Date: March 1, 2022

Version Number: Version 1.0

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

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I. Introduction:

In this document, the Office of the Fairness Commissioner (OFC) is offering information and advice to organizations that regulate professions and compulsory trades (hereinafter regulators) to assist them to:

- understand how the OFC will evaluate their compliance with the legal obligations contained in the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* (or FARPACTA); and
- implement associated best practices in their organizations.

It represents the next iteration of the OFC's efforts, over the last 14 years, to work with regulators to ensure that registration practices are "transparent, objective, impartial and fair".

Ontario's fair access legislative framework is set out in two provincial statutes, which are broadly similar in nature. These are FARPACTA (which governs the 16 non-health professions and the Ontario College of Trades) and the Health Professions Procedural Code under Schedule 2 of the *Regulated Health Professions Act, 1991* (or RHPA). This statute governs the practices and policies of the 26 self-governing health colleges.

This guide focuses on the provincial regulators that are subject to FARPACTA. A separate one covers the health colleges will be available at a later date.

The purpose of this guide is two-fold:

- to provide regulators with information and advice to more fully understand how to comply with their obligations under FARPACTA; and
- to provide OFC staff with a tool to help them assess the degree to which a regulator is complying with its legal 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 [here](#), form the basis upon which the OFC will work with regulators to improve registration outcomes for *all* applicants, including internationally trained individuals.

In general terms, the desired outcomes would encompass such objectives as implementing modern and efficient assessment and registration processes, issuing high quality, consistent and empathetic decisions, and a commitment to adopting best practices.

The OFC believes that the key metrics to define a regulator's success relate to the average and maximum time required to issue registration decisions and the percentage of internationally trained applicants who are successfully registered.

As indicated previously, the legal obligations that regulators must meet are set out in FARPACTA. In general terms, these legal obligations may be divided into three broad categories:

1. The general duty to provide registration practices that are transparent, objective, impartial and fair.
2. A list of specific duties that relate to:
 - Providing information to applicants.
 - Making timely decisions with accompanying responses and reasons.
 - Providing applicants with an internal appeal or review process.
 - Specifying the documentation that an applicant must provide to the regulator to assess their qualifications.
 - Ensuring that assessment decisions made by the regulator, or a third-party service provider, are transparent, objective, impartial and fair.

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).

- Providing training for individuals who make assessment and registration decisions.
 - Offering the right to the applicant to obtain access to relevant records pertaining to the application.
3. A series of review and reporting requirements that the Fairness Commissioner may oblige regulators to undertake based on OFC policy guidelines and/or their specific circumstances. These relate to:
- a. The provision of reports on such matters as:
 - the relevance and necessity of registration requirements, the timeliness of registration decisions, and the reasonableness of fees that are charged to applicants; and
 - accountability frameworks that govern the relationships between a regulator and a third party service provider.
 - b. A regulator's annual or periodic reporting obligations to the OFC.
 - c. The obligations that a regulator must fulfill when it undergoes an audit.

In this guide, the OFC will identify, where appropriate, the steps that it believes regulators should take to fulfill these legal obligations. The object is to provide greater clarity to regulators 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, when implemented, 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. Regulators 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 regulators 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 regulators 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 regulator can demonstrate leadership in its field and more fully embrace modern, forward-looking and empathetic regulatory processes.

It should also be noted that the selection and implementation of best practices will sometimes differ between regulators based on the nature of their mandates and business processes, and the character of the professions are trades 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 regulator 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.

Second, the OFC recognizes that some regulators will be subject to their own enabling legislation which may provide the regulator with the discretion to develop its own measures and procedures to comply with its legal obligations. These obligations may be the same, or different from, those that apply under FARPACTA.

Third, in this guide, the OFC will refer to certain statutory provisions, or use certain terminology to characterize its advice on how a regulator 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 regulators have a wider scope of discretion in terms of acting upon a particular piece of information or advice.

It is the OFC's intention to keep the list of these practices evergreen. We plan to review them regularly to ensure that they remain current, alongside the OFC's list of exemplary/best practices. The OFC views this collection as a common resource and invites regulators to assist us to keep these ideas timely, forward-looking and relevant.

On a related issue, on December 2, 2021, the *Working for Workers Act* received Royal Assent. This legislation contains number of provisions designed to modernize FARPACTA and reduce barriers encountered by internationally trained applicants. These provisions involve establishing maximum time limits for the registration process, reducing the number of language proficiency tests that applicants must take, enabling regulators to maintain the continuity of their registration processes during emergency situations and eliminating the Canadian experience requirement, unless a regulator can make compelling case for its retention. To view a copy of the legislation, please follow this [link](#).

The government has signaled that will immediately begin work to develop the accompanying regulatory provisions to operationalize the legislation. This process will be informed by a series of focused stakeholder consultation sessions. Once these regulations are finalized, the OFC will update these guidelines to address the new obligations that are established.

While the OFC has authored this guide for certain defined purposes, stakeholders have indicated to us that it could also be employed to meet other objectives. For example, the document could also serve as a useful tool to orient new board of director or 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 regulators to understand their obligations under FARPACTA. It is not intended to replace FARPACTA and reference should always be made to the official version of the legislation.

It is the responsibility of regulators to ensure that they comply with the legislation. This resource does not constitute legal advice. The OFC will apply and enforce FARPACTA based on the facts that are identified. This resource does not affect the OFC's enforcement discretion 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 regulators 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 regulators.

To make it easier to follow, Part III is organized around the three categories of legal obligations as set out in FARPACTA: the general duty; specific duties; and reporting requirements.

To provide clarity for users of this guide, we have also linked each specific duty 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 regulator has demonstrated compliance with the particular legal obligation. In that respect, the OFC will outline the type of actions and/or documentation that it will consider to formulate its compliance determinations.

To provide further clarity, each legal obligation is accompanied by one or more recommended examples of how regulators can achieve the required outcomes. The OFC also identifies a list of best practices to help regulators achieve the general duties of transparency, objectivity, impartiality and fairness prescribed in the legislation.

The fourth sub-section of Part III identifies the reporting requirements for regulators associated with preparing and filing their Fair Registration Practices Reports. The content of this section identifies:

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

Sub-section five articulates the legal obligations that a regulator must fulfill should it become subject to an audit.

It is important to note that regulators are subject to legal consequences for failing to meet their legislative obligations. For example, under section 26 (1) of FARPACTA, if the Fairness Commissioner concludes that a regulated profession has contravened Part III or VI of the legislation (which deal with specific duties, the issuance of reports and cooperation on audits), the commissioner may issue a compliance order to the profession requiring that it do, or refrain from doing, the things specified in the commissioner's order.

III. Legal Obligations under Fair Access Legislation:

According to section 1 of FARPACTA, the purpose of the legislation is to:

“help ensure that regulated professions and individuals applying for registration by regulated professions are governed by registration practices that are transparent, objective, impartial and fair”.

1. Fair Registration Practices: General Duty

This articulated purpose is reinforced in section 6 of the Act, which is described as the general duty requirement. It states that *“a regulated profession has a duty to provide registration practices that are transparent, objective, impartial and fair”*. These principles are broad in nature and not defined further in the legislation.

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 regulator'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 regulator'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 regulator 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 regulator 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 profession, college or compulsory trade. 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 regulator 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: Specific Duties

Sections 7 through 12 of FARPACTA set out the specific requirements that regulators must meet to comply with their legislative obligations.

Obligation No.1: The Regulated Profession Shall Provide Information to Applicants about its Registration Practices and Requirements

Section 7 of FARPACTA reads as follows:

A regulated profession shall provide information to individuals applying or intending to apply for registration by the regulated profession and, without limiting the generality of the foregoing, it shall provide:

- (a) information about its registration practices;*
- (b) information about the amount of time that the registration process usually takes;*
- (c) objective requirements for registration by the regulated profession together with a statement of which requirements may be satisfied through alternatives that are acceptable to the regulated profession; and*
- (d) a fee scale related to registrations.*

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

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

Fair Registration Best Practices Related to Obligation No.1:

What follows are examples of how regulators 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 regulator's website in a way that it is easy to find, written in plain language, and is complete and accurate.

- The registration information outlined in section 7 is available in the French language (for some regulators, this will be a requirement already set out in their enabling legislation, and not purely a best practice).
- The information is presented in accessible and, when appropriate, multiple formats that are easy for applicants to retrieve and follow.
- The information lets applicants know whom they may contact if they require further guidance.

Obligation No.2: The Regulated Profession Shall Provide Timely Decisions, Responses and Reasons to Applicants

Section 8 of FARPACTA reads as follows:

A regulated profession shall,

- (a) ensure that it makes registration decisions within a reasonable time;*
- (b) provide written responses to applicants within a reasonable time; and*
- (c) provide written reasons to applicants within a reasonable time in respect of all registration decisions and internal review or appeal decisions.*

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

This provision imposes an obligation on a regulator to ensure that its registration decisions, and other procedural steps in the process, are made within a “reasonable time”. 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.

To assess this issue, the OFC would typically review:

- the regulator's website for information about timelines or service standards relating to making decisions, providing responses to applicants, and offering written reasons which accompany its decisions;
- information obtained from the regulator to identify the measures that it employs to monitor, and ensure adherence to, its articulated timelines or service standards;
- how the regulator justifies the need for the time that it requires to issue decisions and whether the explanation is reasonable;
- whether the regulator takes a client-centred approach in calculating timelines by including the time that an applicant spends in obtaining required services from a third-party service provider;
- 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;
- whether a sample of decisions that the regulator issues contains sufficient reasons to allow applicants to understand the rationale for the decision rendered; and
- broad trends in applicant complaints.

Fair Registration Best Practices Related to Obligation No.2:

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

- the regulator informs applicants about potential delays, and estimated dates for providing responses, decisions and reasons when delays are unavoidable;

- the regulator puts formal procedures in place to measure its performance against its own timelines or service standards in relation to the three obligations outlined in section 8;
- the regulator periodically reviews its:
 - service standards and timelines to verify that they remain reasonable;
 - service standards, timelines and registration procedures to ensure that they do not disadvantage one group of applicants as compared to others;
 - registration procedures to identify opportunities to enhance efficiency.
- the regulator benchmarks its timelines against those for regulators that are similarly situated.

Obligation No.3: The Regulated Profession Shall Provide Applicants with an Internal Review of or Appeal from its Registration Decisions

Section 9 of FARPACTA reads as follows:

- (1) A regulated profession shall provide an internal review of or appeal from its registration decisions within a reasonable time.*
- (2) A regulated profession shall provide an applicant for registration an opportunity to make submissions with respect to any internal review or appeal.*
- (3) A regulated profession may specify whether submissions in respect of an internal review or appeal are to be submitted orally, in writing or by electronic means.*
- (4) A regulated profession shall inform an applicant of any rights the applicant may have to request a further review of, or appeal from, the decision.*
- (5) No one who acted as a decision-maker in respect of a registration decision shall act as a decision-maker in an internal review or appeal in respect of that registration decision.*

How the OFC Will Ascertain whether the Regulator Has Met Obligation No.3:

The crux of this section is the requirement that a regulator provide an internal review or appeal mechanism from its registration decisions within a reasonable time, and that the process adheres to the steps for procedural fairness outlined in those provisions.

In order to ascertain whether the regulator has met this obligation, the OFC will examine:

- the steps that the regulator has taken to ensure that it operates a credible internal review or appeal mechanism and to monitor its adherence to the timelines and/or service standards that it has set;
- how the regulator's timelines measure up against those of regulators that are similarly situated;
- the regulator's published materials which identify the opportunities that applicants have to make submissions with respect to internal reviews or appeals;
- how the regulator provides information to applicants about the formats in which submissions can be made (i.e., orally, in writing or by electronic means);
- how the regulator informs applicants about their rights to request a further review of, or appeal from, a decision;
- the regulator's published materials or other documentation to confirm that no-one who acted as a decision-maker in respect of a registration decision also served in the same capacity in an internal review or appeal in the same matter;
- whether the timelines are reasonable in the circumstances; and
- whether the regulator's processes may potentially prejudice one category of applicants compared to another.

Fair Registration Best Practices Related to Obligation No.3:

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 puts formal procedures in place to measure its performance against its timelines and/or service standards and publishes the results.
- the regulator also provides information regarding:
 - the specific steps that an applicant must follow to complete the review or appeal process, and the sequencing of those steps;
 - the issues that can or cannot be appealed, where applicable;
 - the grounds upon which an internal review committee will agree to reconsider an initial decision; and
 - precedents regarding the content and format of submissions.
- the regulator safeguards impartiality of its internal review and appeal decisions by:
 - following well-documented procedures;
 - basing its decisions only on relevant criteria and evidence;
 - informing decision-makers involved in internal reviews and appeals about potential sources of bias and the steps that they should take if they feel that they cannot review a case impartially;
 - engaging legal counsel to periodically review the regulator’s review and appeals processes.
- If a hearing is required, the regulator provides reasonable accommodation to allow applicants to effectively participate in the process;
- If the regulator charges fees for internal reviews or appeals, those fees do not exceed the actual costs associated with those proceedings.

Obligation No.4: The Regulated Profession Shall Provide Information to Applicants on what Documentation of Qualifications Must Accompany an Application

Section 10 (1) of FARPACTA reads as follows:

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

How the OFC Will Ascertain whether the Regulator Has Met Obligation No.4:

This is also a straightforward requirement. The OFC will seek information from the regulator on how it communicates the information identified in this section to individuals applying, or intending to apply, for membership in the profession or compulsory trade. This inquiry would ordinarily include a review of the regulated profession's website to confirm that the required information is available and easily accessible, and to verify that other publicly available communication materials are provided to applicants.

Fair Registration Best Practices Related to Obligation No.4:

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 information that the regulator communicates to prospective applicants should identify:
 - the required *content* of the documents organized in an easy to access format;
 - the required *format* of the documents, including the translation format, if applicable;
 - the required *method* for sending the documents to the regulator;
 - how to contact the regulator to explore other alternative documentation that may be acceptable beyond the examples that have been posted publicly. (This information would be particularly important where the applicant cannot obtain the required documentation for reasons beyond their control).
- The identified information is available in the French language (for some regulators, this may already be a requirement in their enabling legislation, and not purely a best practice).
- The regulator allows the applicant to submit the documentation directly as opposed through intermediaries, with appropriate safeguards.
- The information provided allows the applicant to readily discern who the individual may contact if they require further information.

The OFC strongly encourages regulators to take a fair and generous approach to accepting alternative documents in situations where the applicant will experience significant difficulties in obtaining these materials, and the registration of the applicant would not otherwise compromise the public interest. Regulators should, at all times, seek to facilitate the registration of competent applicants and not place unnecessary barriers in their paths.

Obligation No.5: The Regulated Profession Shall Assess Qualifications of Applicants in a Way that is Transparent, Objective, Impartial, and Fair

Section 10 (2) of FARPACTA reads as follows:

If a regulated profession 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 Regulator has Met Obligation No.5:

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 candidate must take to advance their application.

In assessing the qualification of applicants, many regulators delegate components of this process to third party service providers (“third parties”). Whether it is the regulator 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 regulator 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 FARPACTA nor its regulations.

Section 13 (3) (d) of FARPACTA 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 regulated professions to assess the qualifications of individuals applying for registration by a regulated profession to help ensure that their assessments are based on the obligations of regulated professions under the Act”.

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 10 (2) of the Act 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 regulator 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 regulator 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 regulator, 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 intended to measure;
- the measures that the regulator takes to ensure that its assessment methods and criteria are methodically and psychometrically sound;
- how the regulator ensures that only qualified assessors make the assessment decisions;
- how the regulator informs applicants about the assessment criteria, methods and results of the assessment;

Where the regulator delegates any part of the assessment function to a third party, the OFC will request relevant materials that identify the measures that the regulator 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 regulator has taken reasonable measures to inform itself about the way 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 regulator has established clear and objective criteria for making assessment and registration decisions, which are clearly documented and consistently followed;
- the regulator 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 regulator implements measures to help ensure that its assessments are valid, reliable and free from bias;
- the regulator ensures that all individuals who assess qualifications, or make registration decisions, possess the relevant knowledge and skills, and receive adequate training; and
- the regulator 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 regulator 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 regulator communicates with applicants to explain the nature of the assessment process to them.

Finally, the OFC will analyze the measures that the regulator 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 office will consider the following factors:

- the nature of the assessment decisions made by the third party and the extent to which they influence the regulator's overall decision-making process;
- whether these decisions are binding on the regulator or whether the regulator retains the discretion to override them where considerations of fairness so dictate;
- whether the regulator 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 regulator exerts contractual control over material aspects of the third party's assessment methods or procedures;
- whether there is a contract in place between the regulator and the third party that establishes service standards for the processing of applications and, if so, whether the agreement affords the regulator 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 regulator 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.5:

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:

- To help applicants better understand the regulator'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 regulator 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.
- The regulator should establish a process to periodically evaluate the educational programs it assesses to ensure that its criteria remain relevant and valid.
- The regulator 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 regulator should similarly ensure that the process through which an applicant can appeal the assessment of their qualifications is straightforward and not cost prohibitive.
- If there a potential for a delay in scheduling assessment appointments or making assessment decisions, the regulator should establish procedures to inform applicants about these delays and provide estimated scheduling/decision dates.
- With respect to third party service providers, the regulator 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.
- there is a mechanism in place to resolve disputes where the contents of an agreement between a regulator and a pan-Canadian assessment or testing agency may be inconsistent with the provisions of FARPACTA.

Obligation No.6: The Regulated Profession Shall Ensure that Training is Provided to the Individuals Assessing Qualifications and Making Registration, or Internal Review or Appeal Decisions

Section 11 of FARPACTA reads as follows:

A regulated profession shall ensure that individuals assessing qualifications and making registration decisions or internal review, or appeal decisions have received training that includes, where appropriate,

- (a) training on how to hold hearings; 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 Regulator has Met Obligation No. 6

The individuals who make assessment, registration, internal review or appeal 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 regulator 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 identified in section 11 of FARPACTA 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 appeal processes.

Fair Registration Best Practices Related to Obligation No. 6:

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 pair experienced decision-makers with individuals who are new to the role;
- the regulator should provide opportunities to discuss difficult cases, while ensuring that the presiding member(s) retains authority to make the final decision;
- the regulator 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 regulator 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 regulators make culturally competent registration decision. Once this work is completed, this section will be updated.

Obligation No.7: The Regulated Profession Shall Provide Applicants with Access to their Records

Section 12 of FARPACTA reads as follows:

- (1) Upon the written request of an applicant for registration by a regulated profession, the regulated profession shall provide the applicant with access to records held by it that are related to the application.*
- (2) Despite subsection (1), a regulated profession 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, as the case may be;*
 - (b) another Act, an Act of Canada or a court order prohibits disclosure of the record or any information in the record in the circumstances;*
 - (c) granting the access could reasonably be expected to lead to the identification of a person who provided information in the record to the regulated profession explicitly or implicitly in confidence, and the*

regulated profession considers it appropriate in the circumstances that the identity of the person be kept confidential; or
(d) granting the access could negatively affect public safety or could undermine the integrity of the registration process.

(3) Despite subsection (2), an applicant has a right of access to that part of a record that can reasonably be severed from the part to which the applicant does not have a right of access by reason of that subsection.

(4) A regulated profession shall establish a process under which requests for access to records will be considered.

(5) A regulated profession may charge the applicant a fee for making records available if it first gives the applicant an estimate of the fee.

(6) The amount of the fee shall not exceed the amount prescribed by the regulations or the amount of reasonable cost recovery, if no amount is prescribed.

(7) A regulated profession may waive the payment of all or any part of the fee that an applicant is required to pay under subsection (5) if, in its opinion, it is fair and equitable to do so.

How the OFC Will Ascertain whether the Regulator has Met its Obligation No.7:

Under this provision, upon written request, a regulator is required to provide access to an applicant of the records regarding this individual's application that the regulator has in its possession. This obligation is subject to certain exceptions.

The object of this section is to ensure that an applicant can review materials relating to their application for registration to ascertain whether it has been processed appropriately and whether to request a reconsideration, review or appeal. This provision constitutes an element of 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).

In order to ascertain whether the regulator has met the obligation set out in section 12 of FARPACTA, the OFC will review the processes that the regulator has put into place to

address these disclosure requirements. The OFC will also seek evidence from the regulator that the fees, if any, that the regulator charges to provide access to records do not exceed the amount of reasonable cost recovery.

Fair Registration Best Practices Related to Obligation No.7:

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 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 regulator 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 regulator 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.

3. Review and Reporting Obligations

3.1 Other Compliance Obligations Involving the Provision of a Report

Requirement No.1: The Regulated Profession Shall Undertake a Review of its Registration Practices and File a Report

Section 19 of FARPACTA reads as follows:

(1) Every regulated profession shall undertake a review of its registration practices at times specified by the Fairness Commissioner to ensure that the

registration practices are transparent, objective, impartial and fair and shall file a report on the results with the Fairness Commissioner by the date specified by the Fairness Commissioner.

(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 regulated profession in respect of registrations.

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

As part of his duties, the Fairness 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 Fairness Commissioner can specify the scope of this review, the commissioner must, at a minimum, 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 regulated profession in respect of registrations.

This provision underscores 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.

Section 23(1) of the Act also requires that the regulated profession make the report that it submits to the Fairness Commissioner, public.

As mentioned previously, section 19 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

The registration requirements to enter a profession will typically identify the qualifications that an applicant must possess, the documentation that the applicant must provide to validate that these qualifications have been met, attributes of a good character or suitability to practice, and the fees that applicants must pay to engage the process. Qualifications, in turn, would most often include:

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

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

Regulators establish those requirements to ascertain which applicants for registration are qualified to practice in the profession or trade. 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 groups of applicants; 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 timelines 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 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 who will be responsible for ensuring that they take timely steps to initiate and progress through the registration process expeditiously (e.g., provide the necessary documentation).

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 (e.g., 90 percent of cases completed within six months);
- whether the regulator regularly measures its performance against these time standards and report the results to its board of directors or 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);
- 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 and empathic fashion;
- whether staffing levels are appropriate to efficiently process case volumes:
- 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 an applicant 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;
- compare performance with statistics obtained from similarly situated regulators; and
- provide recommendations to senior management and/or to the regulators board of directors/council.

(c) Reasonableness of the fees charged by the regulated profession in respect of registrations.

Both regulators and thirdparty service providers will typically charge fees for the services that form part of the registration process. The total fees that an applicant 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 Regulated Profession Shall Provide a Report or Information on its Compliance with the Legislation

Section 22 of FARPACTA reads as follows:

(1) The Fairness Commissioner may require that a regulated profession provide the Fairness Commissioner with reports or information relating to the regulated profession's compliance with this Act and the regulations and the regulated profession shall prepare and file the reports with, or provide the information to, the Fairness Commissioner.

(2) Reports and information required under subsection (1) are in addition to the reports required under sections 19, 20 and 21.

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

Whereas section 19 of the Act requires that a regulator undertake a review of its registration practices to ensure that they are transparent, objective, impartial and fair, section 22 (1) focuses on compliance with the provisions of the Act and its regulations. In general terms, the OFC would rely on section 22 (1) where it has identified issues

relating to instances of a regulator's non-compliance with its legal obligations that are serious, pervasive or longstanding in nature.

Corollary Provisions Relating to Sections 19 and 22 of FARPACTA

Sections 23 and 24 of FARPACTA impose additional obligations on regulators when they provide reports to the OFC. Section 23 of the specifies that:

- (1) A regulated profession shall file all reports required to be filed by it under this Act or the regulations with the Fairness Commissioner by the dates specified by the Fairness Commissioner.*
- (2) A regulated profession shall make reports filed under subsection (1) available to the public.*

Section 24 of FARPACTA reads as follows:

- (1) Reports and certificates required by this Part 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 or other document prepared and submitted by any person for the purposes of this Act or the regulations shall contain personal information.*

Section 23 (1) requires that regulators file all reports by the deadlines that the Fairness Commissioner specifies. Section 24 is an important transparency provision which, among other things, obliges regulators to make their reports available to the public.

3.2 Annual or Period Reporting Obligations

Reporting Requirement No.1: The Regulated Profession Shall Prepare and File a Fair Registration Practices Report

Section 20 of FARPACTA reads as follows:

A regulated profession shall prepare a fair registration practices report annually or at such other times as the Fairness Commissioner may specify or at such times as may be specified in the regulations.

How the OFC Will Ascertain whether the Regulator has Met its Reporting Requirement No.1:

Historically, the OFC has specified the discrete questions to be responded to in its Fair Registration Practices Report (FRP). To ascertain whether a regulator has met this reporting requirement, the OFC will confirm that the regulator has prepared and submitted the required report and 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 will be refreshed periodically to ensure that they remain relevant and aligned with the OFCs new risk-informed compliance framework and broader system-wide objectives.

Pursuant to section 23 (1) of the Act, the OFC will also verify that the regulator has made this report publicly available by the required date.

3.3 Audits

The authority of the Fairness Commissioner to order regulators to undergo audits is set out in section 21 of FARPACTA as follows:

- (1) Every three years or at such other times as the Fairness Commissioner may specify or at such times as may be specified in the regulations, the Fairness Commissioner shall give notice to a regulated profession that an audit must be conducted in respect of its registration practices and of its compliance with this Act 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 the regulated profession must choose and appoint an auditor from the roster established by the Fairness Commissioner by the date specified in the notice;*
 - (b) that if the regulated profession 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 shall apply;*
 - (d) the date by which the audit must be completed; and*
 - (e) that the regulated profession is responsible for paying the auditor's fees and expenses.*
- (3) The regulated profession 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 a regulated profession 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 regulated profession of his or her choice and the auditor shall be deemed to have been appointed by the regulated profession.*
- (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 regulated profession 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 regulated profession with this Act and the regulations as are reasonably necessary for the auditor to perform his or her duties under this Act, including any reports required from the regulated profession under section 19, 20 or 22 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 regulated profession 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) another Act, an Act 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 regulated profession, together with a notice that the profession may, within 30 days, make written submissions to the auditor on the draft report.

(10) The auditor shall consider the submissions, if any, made by the regulated profession 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 regulated profession to which the audit relates.

(12) The auditor shall file a certificate with the Fairness Commissioner certifying that the auditor conducted 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 regulated profession.

(13) An audit is complete when the auditor has provided a copy of the final report to the regulated profession 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 regulated profession made submissions to the auditor on the draft report, a copy of the submissions made by the regulated profession.

(14) The Fairness Commissioner shall provide the Minister with a copy of all auditors' reports within a reasonable time after receiving them.

(15) The regulated profession 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 regulator and the final report must be filed with the minister.

Where the OFC determines that an audit is required, it will typically have acquired a firm understanding of the situations where a regulator has not achieved compliance with the legislation. On this basis, the office will most often 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.



FAIRNESS COMMISSIONER

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