



Annual Report of the Office of the Fairness Commissioner

2018-2019

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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

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Message from the Commissioner

Ontarians depend on the work of regulated professionals every day through the services provided by professional services practices. Professionals in health and non-health practices play a significant role in our service business sector. Businesses depend on the work of the professionals they directly and indirectly employ to provide services essential to their own business success whether it be accountants, lawyers, engineers or health care professionals.

With Ontario's advancing economy, there is an increasing need for the skills that professionals and tradespersons contribute. Fair access legislation was passed with the intent to help eliminate unnecessary barriers that prevent individuals coming to Ontario to practice their professions. Although the Office of the Fairness Commissioner pays particular attention to the red tape and barriers to professional registration that newcomers to Ontario must face when having their international qualifications assessed and recognized, fair access legislation exists for the benefit of all Ontarians whether educated internationally or here at home.

In our annual report last year, we committed to continue working with the regulated professions in Ontario with the objective that any Ontarian, from any background, has an equal opportunity to reach that day when their education, work and preparation results in successful qualification for the professional career of their choice. Through the administration of Ontario's fair access legislation, which includes the Fair Access to Regulated Professions and Compulsory Trades Act, 2006, and the Health Professions Procedural Code (a part of the Regulated Health Professions Act, 1991), we have applied the principles of our continuous improvement plan to promote transparent, objective, impartial and fair registration practices in the 40 regulated professions that are listed in this legislation.

This year was the second year of my two year appointment as Fairness Commissioner which began in early April, 2017. At the beginning of my term, in addition to undertaking my functions as Fairness Commissioner under fair access legislation, I was tasked with three major undertakings which resulted from a scheduled mandate review of the Office of the Fairness Commissioner in 2015.

The first was to transition the Office of the Fairness Commissioner (OFC) from an independent public body, where its employees were not crown employees and its

operations were independent of government, into a commission public body. As a commission public body the OFC would be staffed by members of the Ontario Public Service and its operations would be linked to a specific ministry of the government of Ontario while at the same time preserving the independence of the Fairness Commissioner's mandate.

The second was to enhance and expand stakeholder engagement to generate greater involvement of the regulated professions and other stakeholders with the OFC in the application of fair access legislation.

The third was to develop a risk based system of regulatory oversight and enforcement so that the OFC would function as a modern regulator.

Transition from an independent public body to a commission public body took place on September 1, 2017. Since then the administration and operations of the OFC have been provided by the Ontario Public Service.

In late 2017, we launched a new model for our stakeholder engagement committee and began to meet with that committee on a regular basis. This past year we have expanded our stakeholder interaction to draw upon members of that committee and others from the regulated professions to assist us in the third phase of the evolution of the OFC; creating a risk based oversight and compliance process. We have created working groups of stakeholders and OFC staff to assist us in the development and implementation of the risk based oversight system. The OFC intends to build on the lessons learned from these first working group consultations as it engages with stakeholders in the future on other oversight and compliance related issues.

The development of a risk based system of regulatory oversight is a complicated one involving the creation of an evidence based risk evaluation framework to be used to determine when an evaluation of a regulated profession's practices should take place. Other aspects of this work include: the development of an audit based oversight practice to replace the current continuous improvement approach to assessment; the review of existing compliance practices in order that they can be expressed as compliance standards to be used in the compliance audit process; and the appropriate risk informed regulatory compliance model. A risk informed evidence based approach to OFC compliance actions will ensure consistency of approach when

breaches of fair access legislation are found to have occurred. It is anticipated that this work will be completed and implemented over the next year.

At each major milestone in the establishment of the risk based approach the OFC will keep the regulated professions and other stakeholders up to date and aware of developments. It will invite the regulated professions and other stakeholders to participate in further working groups. The objective of extensive consultation is that the OFC will develop a risk based system of oversight which will be more effective, efficient and workable for the regulated professions; all for the benefit of the people who are applicants for registration as professionals.

Our annual report which follows will address these and other developments which have occurred over the past year, such as the completion of the OFC's Cycle 3 of assessments of registration practices. It will also describe some of the forward-looking initiatives to be undertaken by the Office of the Fairness Commissioner in the future.

One of those forward looking initiatives we instituted this year was launched in February, 2019. To observe Black History Month in Ontario we organized a panel discussion on the topic of systemic black racism in the context of the registration practices of the regulated professions. The goal of the discussion, built upon the concepts of impartiality and fairness in fair access legislation, was to open a dialogue between the OFC and the regulated professions about the presence of systemic racism in the registration practices. We hope that the conversation started in February will continue and develop into a program that would be adopted by all regulated professions. Such a program, if designed by the regulated professions collectively, in association with the OFC and the Anti-Racism Directorate of the Government of Ontario, could be used to seek out instances of systemic racism in registration practices and eliminate those systemic barriers to registration.

It has been an honour to have had the opportunity to serve as Fairness Commissioner over these past two years and to have had a role in helping ensure that access to registration as a professional will be possible for all qualified applicants, whether they are educated and trained internationally or here in Ontario, through registration procedures that are transparent, objective, impartial and fair.

Grant Jameson,
Fairness Commissioner
March 31, 2019

About Fair Access to Regulated Professions and Compulsory Trades

The purpose of Ontario's fair access to professions legislation and the role of the Fairness Commissioner, is to help ensure that individuals applying for registration by regulated professions or compulsory trades are governed by registration practices which are transparent, objective, impartial and fair. The objective is to help ensure that all individuals who are qualified to practice a profession or compulsory trade have a fair opportunity to have their credentials, competencies and qualifications recognized.

Ontario's fair registration practices legislation is found in two statutes. One statute deals with the self-governing professions which control access to the health professions. It is Regulated Health Professions Act (RHPA), in particular Schedule 2 of that act, called the Health Professions Procedural Code (the Code). The other statute governs the non-health related self-governing professions and the College of Trades. They are the regulators which control access to the non-health professions and the compulsory trades. That law is the Fair Access to Regulated Professions and Compulsory Trades Act, 2006 (FARPACTA).

Since the enactment of fair access legislation in 2006, the OFC has been responsible for the implementation of many registration procedures which have benefited applicants for professional registration but there are still barriers to professional registration procedures which the regulators need to address.

Four Principles for Fair Registration Practices

There are four principles set out in fair registration practices legislation which form the basis of the approach to monitoring compliance employed by the Fairness Commissioner.

- **Transparency:** Applicants understand the actions they need to take and see a clear path to the outcome they seek. Measures and structures are in place that make it easy to see how the registration process operates. There is easy access to information, and that information is clear, complete and accurate.

- **Objectivity:** Criteria, training, tools and procedures deliver consistent decision outcomes regardless of who makes the decision, when it is made and the context it is made within. Formal systems, such as criteria, tools and procedures, have been repeatedly tested during their development, administration and review to ensure they are valid, reliable and relevant in measuring applicant qualifications.
- **Impartiality:** Decisions are undertaken from a neutral position. Neutrality is achieved by mitigating actions or behaviours that result in subjective assessments or decisions. All sources of bias are identified, and steps are taken to address those biases. Sources of bias in the assessment or decision-making process might include conflict of interest, preconceived notions or limited understanding or issues related to diversity. There should be active strategies to ensure impartiality. These might include training policies that address conflict of interest, procedures to follow if bias is identified or a group deliberation and consensus process for making decisions.
- **Fairness:** A process or decision is considered fair in the regulatory context when it demonstrates substantive fairness, procedural fairness and relational fairness. Substantive fairness means the decision meets pre-determined and defensible criteria. The decision must be reasonable and the reasoning behind the decision must be understandable to the people affected. Procedural fairness means there is a structure in place to ensure that fairness is embedded in the steps to be followed before, during and after decisions are made. This structure ensures that the process is timely and that individuals have equal opportunity to participate in the registration process and demonstrate their ability. Relational fairness ensures that people are treated fairly during the decision-making process by considering and addressing their perception about the process and decision.

Functions of the Fairness Commissioner

The fair access legislation mandates the Fairness Commissioner to help ensure that fair professional licensing practices are provided to each applicant for professional registration. This oversight is done through several functions listed in Section 13(3) of FARPACTA and Section 22.5(1) of the Health Regulators Procedural Code. These functions include: assessing the regulated professions' registration processes;

initiating audits of registration processes; advising regulatory bodies about their registration process; setting guidelines for the regulatory bodies' yearly reporting obligations; advising provincial government ministries about issues relating to the professions and compulsory trades in their portfolio; and, conducting research to explore issues relating to fairness and identify solutions to those issues.

First among those functions, is the mandate to assess the registration practices of each regulated profession based on their obligation under the legislation? To that end, this year, the Office of the Fairness Commissioner has completed the assessment of the registration practices of each of the 40 regulatory bodies and is currently in the process of reviewing the assessment outcome and articulating its findings. Early findings indicate that:

- About 40% of regulated professions are not meeting their legislated requirements related to reliability and validity of their assessment methods. While this is a substantive improvement as compared to four years ago when only 22% of regulated professions were compliant in this area, there are still breaches in compliance.
- About 30% do not comply with fairness standards in their registration procedure because of requiring some form of prior Canadian work experience in the profession before an applicant can be registered. More specifically, they have failed to explain what professional competencies are being acquired and assessed through such Canadian experience.
- Another 30% of regulated professions are failing to meet standards related to training for their assessors and registration decision-makers. Failing to meet these standards may compromise these individuals' ability to make fair and bias-free qualification recognition decisions.
- Approximately 22% of regulated professions do not have in place reasonable procedures for holding third-party assessors (entities other than the regulatory body that play a role in the assessment and registration process) accountable for their assessments.
- Approximately 20% of the breaches in compliance stem from lack of clarity in communication with applicants and gaps in guidelines for decision-makers.

Overall, the result of the third cycle of assessment has confirmed that great progress has been made since 2006 toward compliance with statutory obligations as indicated

in the fair access legislation. However, these assessments were done through the OFC's Strategy for Continuous Improvement, the OFC's uniquely designed framework for monitoring, assessing, and enforcing compliance of regulated professions with the fair access legislation. There have been many changes in the landscape since this Strategy was adopted. Regulators and the OFC operate in a very dynamic and fast changing environment in which compliance with the legislation is not a state once and forever attained. To continue delivering on our mandate, we now require a different approach to monitoring, assessing, and enforcing compliance. This can be achieved through a risk-informed and evidence-based compliance framework that is closely aligned with the audit-based structure of the legislation. This tool will enable the Fairness Commissioner to mobilize the OFC's resources more efficiently, prioritize the regulatory responses appropriately to the levels of compliance and focus on areas where breaches of the fair registration statutes are most severe.

We have taken several months to develop the way forward toward shifting and moving toward a risk-informed audit-based system of oversight and compliance enforcement. The Health Professions Procedural Code (set out in section 22.5(1)(a)) and FARPACTA in section 21 provide for regular audits of registration practices. Such audits are to be conducted of registration practices by auditors chosen from a qualified roster of approved audit professionals. Once a risk informed audit-based system of assessment is adopted, the current practice of OFC assessments will be discontinued. Audit results will be reviewed from a regulatory risk perspective to ensure that similar breaches of fair access legislation are dealt with fairly and equitably. The planning and research have already been completed and we are now onto the development phase of these projects.

To develop new tools and framework and update the compliance standards, the OFC has relied on the support and advice of its Stakeholder Engagement Committee (SEC). With representative from regulatory bodies, third-party assessment agencies, provincial government ministries, immigrant serving organizations and postsecondary institutions professional, the SEC is providing great advice on the development of the OFC's audit standards and risk-response model. In addition, a number of working groups have been created to examine and provide comments on positions adopted by the OFC on several issues.

Stakeholders in Fair Access to Regulated Professions and Compulsory Trades

The key stakeholders who benefit from FARPACTA and RHPA are the people who apply for professional registration, whether educated in Ontario or are internationally educated and trained. Stakeholders also include provincial regulatory bodies, third party assessment agencies, provincial ministries responsible for the regulatory bodies, federal government, immigrant serving organizations, business, employers, unions, academia, other fairness commissioners and the wider public.

Applicants for a license are the main beneficiaries of the outcomes of the OFC's oversight and compliance mandate. The Fairness Commissioner is not mandated to formally receive complaints from applicants or to act directly on behalf of applicants. Nonetheless, applicants are at the heart of fair access, and are therefore important in informing the OFC's work.

Addressing New and Ongoing Issues of Fair Registration for Regulated Professions and Compulsory Trades

Several key issues have been identified by the OFC's regular monitoring of registration practices. The OFC is paying closer attention and following up on certain aspects it considers significant barriers to entry. For example, last winter, the OFC was interested in understanding how and if regulators in Ontario are offering and providing French-language registration practices to applicants for professional registration. While there is no universal obligation for the non-health professions to provide registration services in French, there is a specific duty to provide these services in French in the health professions. Through a survey conducted during the winter of 2018, the OFC found that there is no consistency in how French-language services are being provided in registration practices

The OFC is also looking for ways to eliminate or find an acceptable alternative to the prior Canadian experience requirement. This requirement means that applicants must undertake a period of practical training or work experience in Canada related to

the profession in order to be considered eligible to apply for a licence to practice their profession in Ontario. Depending on the professions' requirement, it may be done through practical training, internships, work experience, mandatory bridging programs, supervised practice or residency. This requirement is potentially a systemic barrier for applicants and the OFC has been more forceful in asking the 12 regulators that possess this requirement to eliminate it completely or to adequately address the case for it to remain a requirement for registration.

A third area of escalated oversight relates to practices of third-party service providers that can be either Canadian or Foreign corporations which provide services such as credentials assessments, examination preparation and processing or language assessment to Self-Governed Professions. The actions of such practices can derail the applications of internationally educated individuals preemptorily. The OFC is looking at ways to monitor the activities of third parties to ensure that their processes comply with fair access. The planning and research of these projects have been completed. We are now onto the development phase of these projects.

Finally, the OFC is tightening up its system of oversight and compliance to the legislation with continuing follow-up on all outstanding recommendations made to regulated professions. Through written correspondence with each regulated profession, compliance analysts have begun advising professions that receiving a recommendation about a registration practice indicates non-compliance with fair registration legislation. Regulated professions are being required to alter these non-compliant practices. For the first time, regulated professions are being advised that they are in breach of the fair access legislation. These letters go on to advise that failure to rectify the breach in a timely manner may result in the issue of a compliance order under FARPACTA or, in the case of a health professions regulator, referral of the non-compliant practice to the Minister of Health and Long-Term Care under the provisions of the Health Professions Registration Code.

Regardless of the status of compliance of specific regulators, the Fairness Commissioner has met with Ministers responsible for regulators on matters related to the administration of the fair access legislation. Over the years, the number of regulatory bodies that the OFC oversees has fluctuated because of mergers in governing organizations or health professions that became regulated. In fall 2018, it was announced that the Ontario College of Trades, which is responsible for compulsory trades under FARPACTA would be winding down and replaced by a new

model for the regulation of the skilled trades and apprenticeship system. Because of this pending change, the Fairness Commissioner determined that activities related to the trades be suspended. This decision would be reviewed periodically pending legislation development.

In addition to monitoring and advising functions, the Fairness Commissioner is frequently invited to speak to stakeholders and counsel meetings to inform them on the state of the OFC's work and new development.

In February 2019, the OFC held a panel discussion on systemic racism to observe Black History Month in Ontario. The goal of the talk was to open a dialogue between the OFC and the regulated professions about the presence of systemic racism in registration practices. We hope that the conversation started in February will continue and develop into a program that would be adopted by all regulated professions to seek out instances of systemic racism in their registration practices and eliminate those systemic barriers to registration. In the upcoming year, we intent to hold a number of similar panel discussions on emerging issues in fair registration practices.

Mandate Performance Measurements

The overarching goal of the OFC is to ensure regulated professions and individuals applying to be licensed by them are governed by transparent, objective, impartial and fair practices is considered as "met" when 100 % of regulated professions achieve 100 % compliance with the fair access legislation.

To this end, the aim is two folds: fair access to registration for applicants and increased compliance with the fair access legislation. This should be done within reasonable timeframes and within the OFC budgetary and legislative frameworks. Therefore, the OFC performance framework will focus on outcomes and performance indicators that would measure whether the OFC is achieving the highest possible compliance rates using the most effective regulatory tools while utilizing its resources in an efficient manner. It also measures if this is done within reasonable timelines, in accordance with applicable OPS directives and within the allocated budget.

Organizational Structure of the Office of the Fairness Commissioner

The OFC is structured as a non-board-governed provincial agency. It is not organizationally part of a ministry but is part of government.

It is headed by the Fairness Commissioner, who is appointed by Order in Council. The provincial agency model addresses the need for operational flexibility as necessary. The OFC implements the mandate of the Fairness Commissioner as set out in FARPACTA and the RHPA. Under FARPACTA, the Minister is responsible for the administration of FACRPACTA (Section 4, FARPACTA).

The Commissioner performs the functions set out in FARPACTA which include being head of the OFC, reporting to the Minister on matters related to the administration of FARPACTA and for carrying out the roles and responsibilities assigned to the Commissioner in a Memorandum of Understanding with the Minister, in Applicable Government Directives and in other Applicable Legislation.

During the 2018-2019 fiscal year, the Fairness Commissioner was Grant A. Jameson who was appointed on April 5, 2017 for a two year term that expires on April 4, 2019. The implementation of Office policies and operational decisions are conducted by the Director who manages a staff of nine full-time employees. The Director is accountable to the Commissioner and the Deputy Minister for the business, planning and performance of the Office.

Appendix A - Financial Statements

Office of the Fairness Commissioner		
Statement of Operations		
Period from April 1, 2018 to March 31, 2019		
Revenues	Year Ended March 31, 2019	
Ministry of Citizenship and Immigration		
Recovery of Prior Years Expenditures		(18,932.79)
	2018-19 Budget	Actual Expenditures
Standard Account		
Salaries and Wages	754,700	661,892.10
Employee Benefits	86,200	91,401.83
ODOE	867,200	564,755.72
Total	\$ 1,708,100	1,299,116.86

Appendix B – Appointments

Fairness Commissioner: Grant A. Jameson

Appointed: April 5, 2017

Appointment term expires: April 4, 2019

Total part time per diem appointee remuneration paid for 2018-2019 is \$165,840.00

Appendix C – List of Regulated Professions

The Fairness Commissioner oversees the regulated practices of 42 regulated professions (28 health and 14 non-health) and 23 compulsory trades that are regulated by 40 regulatory bodies, which include:

- Chartered Professional ACCOUNTANTS of Ontario
- Ontario Association of ARCHITECTS
- College of AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGISTS of Ontario
- College of CHIROPODISTS of Ontario
- College of CHIROPRACTORS of Ontario
- College of DENTAL HYGIENISTS of Ontario
- Royal College of DENTAL SURGEONS of Ontario
- College of DENTAL TECHNOLOGISTS of Ontario
- College of DENTURISTS of Ontario
- College of DIETITIANS of Ontario
- College of EARLY CHILDHOOD EDUCATORS
- Ontario Association of Certified ENGINEERING TECHNICIANS AND TECHNOLOGISTS
- Professional ENGINEERS Ontario
- Ontario Professional FORESTERS Association
- Association of Professional GEOSCIENTISTS of Ontario
- College of HOMEOPATHS of Ontario
- HUMAN RESOURCES PROFESSIONALS Association
- College of KINESIOLOGISTS of Ontario
- Association of Ontario LAND SURVEYORS
- LAW Society of Ontario
- College of MASSAGE THERAPISTS of Ontario
- College of MEDICAL LABORATORY TECHNOLOGISTS of Ontario
- College of MEDICAL RADIATION TECHNOLOGISTS of Ontario
- College of MIDWIVES of Ontario
- College of NATUROPATHS of Ontario
- College of NURSES of Ontario
- College of OCCUPATIONAL THERAPISTS of Ontario

- College of OPTICIANS of Ontario
- College of OPTOMETRISTS of Ontario
- Ontario College of PHARMACISTS
- College of PHYSICIANS AND SURGEONS of Ontario
- College of PHYSIOTHERAPISTS of Ontario
- College of PSYCHOLOGISTS of Ontario
- College of Registered PSYCHOTHERAPISTS of Ontario
- College of RESPIRATORY THERAPISTS of Ontario
- Ontario College of SOCIAL WORKERS AND SOCIAL SERVICE WORKERS
- Ontario College of TEACHERS
- Ontario College of TRADES
- College of TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS of Ontario
- College of VETERINARIANS of Ontario



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