



Annual Report of the Office of the Fairness Commissioner 2021-2022

A Transformational Year for Fair Registration Practices



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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Commissioner's Message

The Office of the Fairness Commissioner (OFC) is an agency of the provincial government, which performs an important oversight role across Ontario's regulated professions, regulated health colleges and Skilled Trades Ontario. Its mandate is to help ensure that the registration practices of these organizations are transparent, objective, impartial and fair.

The work of the OFC is designed to provide better outcomes for applicants who wish to join the professions and compulsory trades, whether they are educated in Ontario, other Canadian jurisdictions, or internationally.

I was initially appointed as Fairness Commissioner in January 2020 and assumed the position on a full-time basis in August 2020. Thus, I have now been in this role for close to two years. In our office's last annual report, I provided some information on my personal background, which you are welcome to review [here](#).

This annual report covers the period from April 1, 2021, to March 31, 2022. During this time, the OFC embarked on several important initiatives designed to achieve better outcomes for applicants and to solidify its role as a modern regulator. These efforts were achieved during a time of significant change and uncertainty as professional regulators and applicants alike continued to address the challenges associated with the COVID-19 pandemic.

Over this period, our office devoted a substantial amount of time in working with the provincial government to develop several important legislative amendments to the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* (FARPACTA). These amendments will invigorate a legislative framework that has been unable to satisfactorily address a number of persistent registration challenges for internationally trained applicants.

I fully expect that these new provisions will have a significant, positive impact on the registration journeys of these candidates and that 2021-22 will be seen as a transformational year for fair registration practices. I will have more to say about these amendments later in the annual report.

Our office also worked hard to develop and refine our policy and program materials, to promote a new vision for a fair access registration ecosystem, to modernize our compliance system, and to obtain the perspectives of stakeholders on these approaches. We also launched our first ever client satisfaction survey.

In our office's last annual report, I pointed out that Ontario's workforce is aging and that newcomers represent an important source of new entrants into the labour market. I noted that net migration is projected to account for a full 83 % of all population growth in the province from 2019 to 2046. This means that only 17 % of this growth will come from in-province increases in population.

On this basis, it remains more important than ever for everyone involved in the registration of internationally trained applicants to relentlessly focus on ways to remove barriers that unfairly restrict these individuals from obtaining access to the professions and skilled trades. In this report, we provide some ideas on how to achieve this objective.

As I mentioned in our last annual report, our office joined the newly constituted Ministry of Labour, Immigration, Training and Skills Development (MLITSD) in October 2019. This ministry now houses the government's labour market and immigration programs and is a natural fit for our agency. During this period, we have continued to cultivate collaborative relationships with our colleagues in these program areas.

The minister's office has also sought our input and advice on a variety of important issues. In general, everyone has welcomed our perspectives on the state of fair registration practices in the province. We feel fortunate to continue to be part of such a collaborative ministry.

Our stakeholder environment is extensive and multi-layered. It mirrors the journey of applicants through various stages of the immigration, education, credentials assessment, registration, and employment processes. We refer to this stakeholder environment as the 'fair registration practices ecosystem' and will speak more about this continuum later in this annual report.

While our office regularly engages with many stakeholders, our relationships with Ontario's 41 regulators is particularly important. That is the case because, at the end of the day, they are directly accountable for implementing fair registration practices. During the year, our office worked hard to strengthen these relationships.

Our compliance analysts regularly meet with regulators to discuss their accomplishments and challenges, and to offer insights on how to further improve their practices. This dialogue has most recently focused on the implementation of our office's new risk-informed compliance framework.

We have also deepened our ties with immigration settlement and labour market groups, assessment and testing organizations that offer services to applicants and regulators, government bodies with mandates that impact our work, and a wide variety of other groups and subject-matter experts.

During the consultation process that informed the enactment of the new FARPACTA legislative amendments, we were able to hear from many of these groups directly about the barriers that internationally trained applicants encounter during their registration journeys and ways to improve this situation.

We also meet monthly with officials from the Ontario Ministry of Health (MOH), which has a broad supervisory mandate for the 26 health professional colleges for which we have joint oversight. I would like to personally thank MOH staff for their willingness to

share information with our office and for engaging in constructive discussions on a variety of important issues that impact applicants to the health regulatory colleges.

We have also established strong ties with groups whose mandates straddle federal-provincial areas of responsibility across these sectors and with fairness commissioners/officers in five other Canadian jurisdictions, soon to be joined by Saskatchewan.

I wish to specifically commend the work of OFC staff during this particularly eventful period. Despite predominantly working from home over the last year, they have demonstrated remarkable perseverance and productivity in a virtual setting. The many initiatives outlined in this annual report are a testament to their knowledge, resilience, and dedication.

In April 2022, our office celebrated its 15th anniversary as a public organization. After a period of more muted activity, we have now put some important building blocks in place. We are eager to continue to work with the government and our stakeholders to further advance fair registration practices in the province.

We have a lot to report on so let's get started!

Sincerely,

Irwin Glasberg,

Fairness Commissioner for the Province of Ontario

Mission, Mandate, Principles and Regulator Compliance Obligations

Introduction

The OFC's mandate is to oversee the registration practices adopted by regulated professions, regulated health colleges and compulsory trades. This authority is set out in two provincial statutes, which are broadly similar in nature.

These are FARPACTA, which governs the 14 non-health professions, and Skilled Trades Ontario, and the Health Professions Procedural Code under Schedule 2 of the *Regulated Health Professions Act, 1991* (RHPA). The latter statute governs the practices and policies of the 26 self-governing health colleges.

Collectively, these two statutes are sometimes referred to as fair-access legislation. Under Ontario's framework for self-regulation, a statutorily authorized profession or trade assumes responsibility for registering and onboarding new applicants into their organization and for governing the professional conduct of its members so that the public interest is served.

The statutes also require that regulators set standards of competency for individuals who wish to join the profession or trade. Applicants must, in turn, meet these standards to register and receive a license to legally work in the occupation and/or obtain the right to use a professional title.

The OFC works with these regulatory bodies to establish registration processes that are transparent, objective, impartial and fair, and that meet the more specific legal obligations identified in the legislation. Our overarching goal is to help ensure that qualified professionals can contribute to Ontario society to the full extent of their skills, training, and aptitudes.



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The Four Foundational Fair Registration Principles

The philosophical underpinning of Ontario's fair-access legislation is reflected in the general duty provisions of the two statutes (section 6 of FARPACTA and section 22.2 in Schedule 2 of the RHPA). In both cases, the relevant provision states that a regulated profession or regulated health college has a duty to provide registration practices that are transparent, objective, impartial and fair. These principles are broad in nature and guide the fundamental work of the Fairness Commissioner.

The OFC interprets these terms in a common sense and straightforward fashion. Our working definitions are set out below.

Transparency

To be transparent means that a regulator's instructions and guidelines for its registration processes are clear, accurate, and straightforward. This degree of clarity is necessary to enable applicants to easily follow the required steps in the process. Transparency also demands the availability of 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 factual context, and/or whether the decision is made by a regulator or a third-party service provider. 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 conflicts 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 address such bias and ensure impartiality, which would normally include enhanced training and the adoption of standard 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, health 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 arm's-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.

Specific Legal Duties

While the general duty constitutes an overarching legal requirement in its own right, the four nested principles also provide a philosophical underpinning and interpretative framework for applying the more specific duties outlined in the legislation. These provisions, which are set out in sections 7 through 12 of FARPACTA (sections 22.3 to 22.4 of Schedule 2 of the RHPA), deal with such requirements as:

- Providing information to applicants.
- Making timely decisions with accompanying responses and reasons (FARPACTA only).
- Providing an internal appeal or review process.
- Specifying the documentation that applicants must provide to enable an assessment of their qualifications.
- Ensuring that assessment decisions made by the regulator, or a third-party service provider, are transparent, objective, impartial and fair.
- Providing training for individuals who conduct assessments and make registration decisions.
- Enabling applicants to obtain access to records relevant to their files.

Functions of the Fairness Commissioner

The OFC is led by the Fairness Commissioner, whose overall mandate is set out in section 13(3) of FARPACTA and 22.5(1) of Schedule 2 of the RHPA. While the wording of the two statutes differs in certain respects, the legislation confers the following broad functions on the commissioner:



- Under FARPACTA the Fairness Commissioner's functions include:
- assessing the registration processes of regulated professions;

- specifying when a regulator's registration practices should be reviewed and when fair registration practices report should be filed;
- monitoring third parties relied on by regulated professions to help ensure that their candidate assessment processes comply with the legislation;
- providing information and advice to regulators to help them understand how to comply with their legislative obligations;
- establishing eligibility requirements that a person must meet to qualify to conduct audits;
- advising ministries about matters under the legislation that affect a ministry or a regulator under its jurisdiction;
- advising the MLITSD Minister on the administration of the legislation; and
- reporting to the MLITSD Minister and other ministers on registration practices relating to internationally trained individuals.

Other provisions in the legislation elaborate upon these authorities.

The OFC now oversees the licensing practices of 41 regulatory bodies. These organizations cover virtually every sector of the province's economy. Our office also performs a variety of other roles consistent with its statutory mandate. These include disseminating best practices and providing education and consultancy services to regulators and other stakeholders.

In undertaking these responsibilities, the OFC seeks to identify artificial or systemic barriers, and associated red tape, that can impede the ability of qualified applicants to work in their chosen profession or compulsory trade. These barriers are especially problematic for internationally trained applicants whose skills may be discounted unless regulators incorporate fair-minded and culturally competent practices into their registration processes.

In addition, as part of MLITSD, the OFC is able to work collaboratively with its ministry counterparts to help ensure that Ontario's immigration, labour-market, and domestic mobility goals for the employment of skilled professionals and tradespersons are synchronized.

The intended beneficiaries of fair access legislation are the individuals who apply for registration to a profession or skilled trade, whether they are domestically or internationally educated or trained.

While the legislation prohibits the Fairness Commissioner from becoming involved in individual registration decisions, internal reviews or appeals, the office may choose to pursue fair registration issues that are repetitive in nature or that display a systemic dimension. We continue to be active in this sphere.

The Fair Access Registration Ecosystem

As noted previously, the OFC interacts with a complex ecosystem that is associated with an applicant's journey through the education, credentials assessment, registration, licensing and employment processes. The various participants, and when and how they interact with applicants are depicted in Figure 1 in this report.

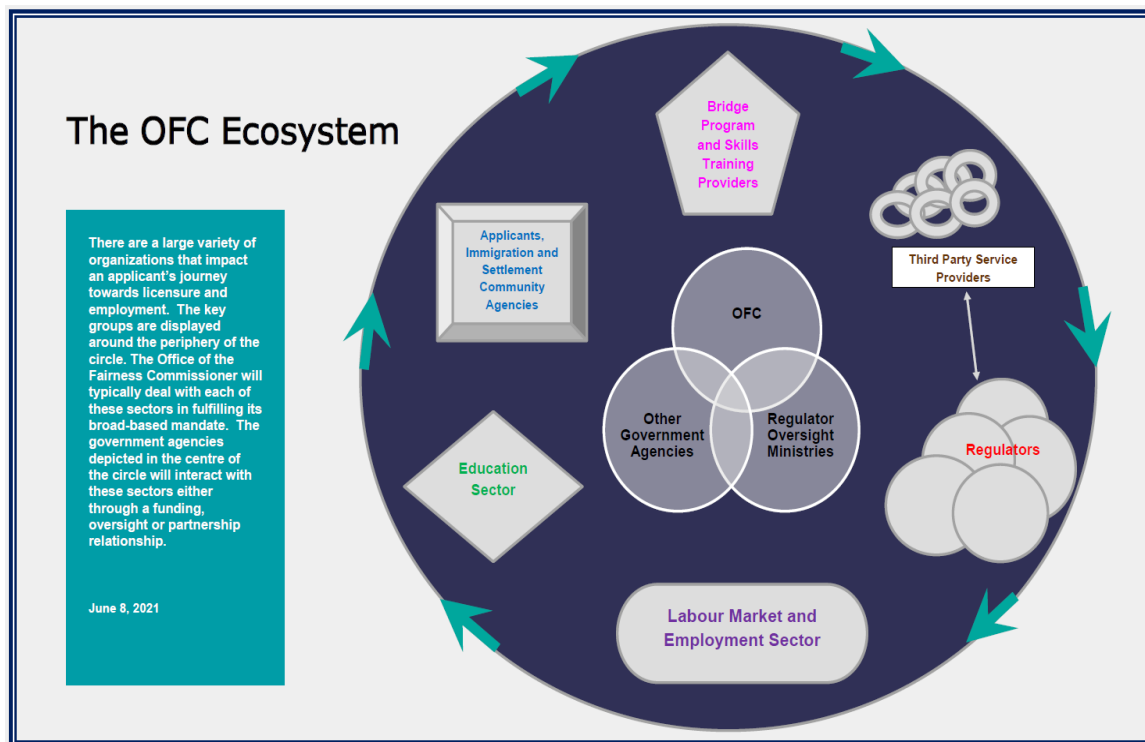


Figure 1: The OFC Ecosystem

As this diagram illustrates, the applicant's pathway through the registration process can be complex and is typically influenced by multiple organizations.

The ecosystem is multi-pronged and includes the following individuals and groups:

Domestic and Internationally Trained Applicants and Community Service Agencies:

- Associations representing applicants.
- Community-based organizations that oversee programs involving immigrant settlement, workforce integration and skills development.

The Education Sector:

- The Council of Ontario Universities.
- Individual universities and colleges.
- Members of academic institutions.

Regulators and Associated Organizations:

- Professional regulators, professional health colleges and Skilled Trades Ontario.
- Ontario regulatory umbrella organizations, such as the Ontario Regulators for Access Consortium, the Health Profession Regulators of Ontario, and the
- Canadian Network of Agencies of Regulation.

Third-Party Service Providers:

- Credential assessment agencies.
- Pan-Canadian alliances.
- Testing bodies.

Government Oversight Ministries and Agencies:

- Various divisions of the Ministry of Labour, Immigration, Training and Skills Development and the Ministry of Health.
- The six other provincial ministries with oversight responsibilities for professional regulators and Skilled Trades Ontario.
- The federal Department of Immigration, Refugees and Citizenship Canada.
- The Canadian Information Centre for International Credentials.
- The Ontario Human Rights Commission.
- Fairness Commissioners and Officers in five other Canadian jurisdictions.

The Labour Market and Employment Sector:

- Employers and employer associations.
- Trade unions.

Our Office's Accomplishments

During the year, the OFC took important steps on its journey to become a more modern, responsive, and strategic regulator. In this section, we will highlight our key achievements.

Implementation of the New Risk-informed Compliance Framework

In 2020, the OFC decided to migrate to a new compliance framework for the following reasons:

- The increasing maturity of many professional regulators.
- Inherent limitations on the OFC's continuous improvement model.
- The absence of an evidence-based model to allocate limited compliance resources to regulators requiring the most support.

In April 2021, and following substantial consultations, the OFC launched the first phase its Risk-Informed Compliance Framework (RICF), which fully came into effect on April 1, 2022. This framework relies both on the regulator's historical performance, and a series of forward-looking risk factors, that could impact a regulator's ability to achieve better registration outcomes for applicants.

Our office chose to implement this initiative in a staged fashion, including a 12-month transition period, to allow regulators to migrate to the new system and to comply with any outstanding OFC recommendations. During this period, which began on April 1, 2021, OFC compliance analysts reviewed each regulator's historical performance, the steps taken to implement any outstanding recommendations, and how the regulator has addressed each of our office's forward-looking risk factors. Our office gathered the necessary information through virtual meetings and the administration of a risk-assessment questionnaire.

The OFC then initiated an analysis of each regulator's historical performance and weighed the impact of its five forward-looking risk factors, to identify the appropriate cumulative risk rating for the regulator. These risk ratings fell into three categories (1) low risk, (2) moderately low risk and (3) moderate to high risk. For a list of both the historical and forward-looking considerations, please refer to our [Risk-informed Policy Framework and Policy](#).

Each risk rating is associated with a list of compliance tools that the OFC can choose to apply. In general terms, our office will devote the majority of its compliance resources to regulators in the higher risk categories. The OFC provided most regulators with their risk ratings in April 2022 as a precursor for identifying the appropriate compliance strategy.

According to client survey results, the new framework has been well received by regulators who understand the advantages of a risk-based approach. We will continue to monitor the effectiveness of this scheme and adjust as necessary.

Launch of the Legislated Obligations and Fair Registration Best Practices Guide

In February 2022, the OFC posted its new Legislated Obligations and Fair Registration Best Practices Guide for Regulated Professions and Compulsory Trades (the guide). This is a companion document to the risk-informed compliance policy.

In developing the guide, the OFC consulted widely with regulators, representatives from the immigration and settlement communities, and subject matter experts. The guide came into effect on March 1, 2022, and may be accessed [here](#).

The purpose of this guide is two-fold. First, to provide regulators with information and advice to more fully understand how to comply with their obligations under FARPACTA. Second, to offer our staff a tool to help them assess the degree to which a regulator is achieving compliance.

We also considered it essential to supplement these obligations with a list of 50 plus best practices designed to improve the quality, timeliness, and fairness of registration decisions, and to generally promote excellent client-service. These best practices are, in turn, linked with particular sections of the guide.

Owing to some differences between the wording of FARPACTA and Schedule 2 of the RHPA, this guide only applies to the non-health professions and to Skilled Trades Ontario. We are currently working with the Ministry of Health to develop a companion document for the health colleges, which will be circulated for comment at a later date.

While the two documents will be different in certain respects, they also exhibit many similarities. Thus, the OFC has encouraged the health regulatory colleges to carefully reflect on the contents of the guide, with particular reference to the embedded best practices, which have wide applicability across the regulatory community. We view this collection of best practices as a common resource and invite regulators to assist us to keep these ideas timely, forward looking, and relevant.

We similarly encourage regulators to share this guide with their council members, leadership teams and staff, as appropriate.

Pivotal Legislative Amendments to FARPACTA

In the Spring of 2021, MLITSD and OFC officials co-chaired a total of 15 stakeholder roundtables to address barriers to labour mobility for both domestic and internationally trained professionals and tradespersons. These roundtables were designed to:

- Offer participants from a wide variety of backgrounds the opportunity to identify such barriers and to share their experiences on how they could be eliminated; and
- more clearly delineate the barriers to domestic labour mobility that applicants encounter and ways to address these issues.

Based on feedback obtained from these sessions, on October 25, 2021, the government introduced five targeted amendments to FARPACTA, which eventually formed part of the *Working for Workers Act, 2021*. This bill was proclaimed into force on December 2, 2021.

The object of these amendments, which apply to the non-health regulators and to Skilled Trades Ontario only, is to reduce barriers that internationally trained applicants encounter in their career journeys, so that they can more easily join their chosen profession or trade. They will also help to address current and anticipated shortages of skilled labour.

The five amendments are designed to:

- Eliminate Canadian experience requirements (CER) unless a regulator can obtain an exemption from this prohibition for the purposes of public health and safety, in accordance with the regulations.
- Reduce the number of language proficiency tests that applicants must take on their immigration and professional licencing journeys.
- Establish maximum time periods within which a regulated profession must make certain defined registration decisions.
- Enable expedited registration processes in case of an emergency.
- Provide for alternative program pathways through which accurate and timely information can be disseminated to newcomers about the prospects of becoming registered in Ontario and the timelines involved.

Following the enactment of this legislation, the government brought forward Ontario Regulation 261/22 under FARPACTA to operationalize these provisions.

On April 11, 2022, a second piece of new legislation, *the Working for Workers Act, 2022*, received Royal Assent. This new law includes further amendments to FARPACTA that stipulate maximum time limits for domestic labour mobility candidates.

Finally, on April 14, 2022, the legislature passed the *Pandemic and Emergency Preparedness Act, 2022*, which contains amendments to the RHPA that are similar, though not identical to, the five FARPACTA amendments. These provisions now apply to the professional health colleges.

The FARPACTA amendments address a number of longstanding registration barriers that the existing legislation could not adequately address. A prominent feature of the new legislation involves prohibiting regulators from retaining a CER unless they are able to obtain an exemption from the MLITSD Minister for reasons of public health and safety.

A CER typically obliges internationally trained applicants to obtain Canadian work experience as a condition of registration. Requirements such as these can represent the “last mile” in the registration journeys of these international candidates. Canadian experience is not always easy to come by and some applicants simply give up because they cannot obtain it.

Under the new legislation, should a regulator fail to obtain such an exemption, any existing CER would become void as of December 3, 2023. The Fairness Commissioner will be responsible for initially reviewing any exemption applications and for making recommendations to the MLITSD Minister on whether the exemption should be granted. The Minister will make the final determination.

The FARPACTA amendments also created regulation-making authority for the government to establish time limits for defined components of the registration process. For example, by virtue of Ontario Regulation 261/21, regulators are required to communicate a registration decision to an internationally trained applicant within six months, following receipt of all documentation, in 90% of all cases.

Under the companion *Working for Workers Act 2, 2022*, regulators must issue a registration decision to a domestic mobility candidate within 30 days after receiving an application.

Regulators will also be required to report on their ability to register internationally trained applicants within one year of the receipt an application. That one-year period would include any work undertaken by third-party service providers, such as qualification assessments. Regulators will also be obligated to submit annual continuous improvement plans to the Fairness Commissioner that show the steps to be taken to meet this standard where regulators are not achieving it.

These are critical provisions that will enable regulators and the government to measure the “stem to stern” registration process for internationally trained applicants to identify systematic barriers and to find creative ways to drive efficiencies into their registration processes.

The legislation also provides for regulation-making authority to govern English or French language proficiency testing requirements for candidates applying for registration. Under section 3(1) of Ontario Regulation 261/21, a regulated profession must accept proof of completion of a language test accepted by Immigration, Refugee and Citizenship Canada, with results acceptable to the regulated profession, in full satisfaction of that language proficiency testing requirement.

In addition, the legislation deems an applicant's results on such a language to be valid if the applicant successfully completed the test within two years before the date of making the application. In addition, under section 3(3), these results are similarly deemed to be valid until the applicant receives a registration decision.

These amendments are important as they will reduce unnecessary registration barriers and address language proficiency testing from a client-focused, rather than an institutional, silo-based, perspective.

With respect to expedited registration processes in cases of an emergency, a regulated profession will now be required to file an emergency registration plan with the OFC within one year of the regulation coming into force, along with updates whenever there is a change in circumstances. This plan is to include measures to issue temporary or short-term registration and to expedite the renewal of registration, if appropriate.

As a whole, the OFC expects that these amendments will provoke significant change to the registration system. During the upcoming fiscal year, our office will continue to engage with MLITSD on any further consultation activities and issue operational guidelines, as necessary, to assist regulators to meet their compliance obligations.

Accountability Measures for Third-party Service Providers

Increasingly, regulators in Ontario are devolving important components of their assessment, examination, and registration processes to third-party service providers. The importance of the work that third-parties perform has been driven home by the Covid-19 pandemic, where a number of these service providers were required to cancel examinations that regulators had asked them to oversee. These decisions created material impacts for registrants.

Under section 10(2) of FARPACTA (section 22.4(2) of Schedule 2 of the RHPA):

“If a regulated profession 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”.

The upshot of this provision is that regulators remain legally accountable for the work that their third-party service providers undertake.

During 2021, the OFC established three working groups to explore these accountability issues in greater detail. These separate groups were composed of regulators, third-party service providers and representatives from the immigration and settlement communities. The OFC convened a total of eight meetings and found that the diagnostic work and insights provided were extremely useful.

To build on this work, the OFC has since formalized the membership of a consolidated working group to further explore mechanisms to enhance the accountability relationship

between the parties, improve client service and more actively disseminate best practices.

Due to the need for our office to redirect resources to the FARPACTA legislative amendments exercise, we were obliged to pause work on this project. The OFC expects that the consolidated working group will resume its mandate in Fall 2022.

An Inclusion and Anti-Racism Lens for Candidate Registration

The registration of professionals and skilled tradespersons is influenced by the same sources of institutional bias common to other broader public sector activities. In that respect, many regulators have recognized the need to squarely identify diversity, inclusion, and anti-racism issues that may impact their registration decisions, particularly as they relate to internationally trained applicants.

The OFC believes that it is important to build upon this proactive work and to develop a more formal inclusion and anti-racism lens to scrutinize the registration process, as well as other tools that may add value. During 2021, the Office began to engage regulators and other stakeholders on how to launch such initiatives and embed them into organizational cultures.

As an example, in September 2021, the OFC partnered with the Health Profession Regulators of Ontario (HPRO) to organize a webinar on the collection of race-based data, that the Ontario Human Rights Commission presented. This event was extremely well received, and the OFC plans to further engage regulators in these conversations by continuing to work with umbrella groups like HRPO and by developing more education and outreach materials.

Our office would also like to make specific reference to the work of Professional Engineers Ontario, which recently developed and approved a new and progressive Anti-racism and Equity Code. This document can be accessed at the regulator's web site [here](#).

Office of the Fairness Commissioner Newsletter

We continue to publish our popular OFC *Newsletter*. During the last year, we issued eight *Newsletter* editions featuring 15 articles. Among the topics that we covered were ways to reduce barriers for language proficiency testing, Ontario professional regulators and the public interest, and several spotlights on innovative best practices. Our Newsletter publications can be accessed [here](#).

Recalibrating the OFC's Fair Registration Practices Report (FRP)

In previous annual reports, the OFC published several tables identifying registration patterns during the last 12-month period. We compiled these reports from data provided by regulators as part of their annual Fair Registration Practices Reports (FRPs).

In December 2021, the OFC made the decision to delay the distribution of its 2020-21 FRP template to regulators for two reasons. First, there was a need to incorporate the data elements underpinning our new risk-informed compliance framework into this document.

Second, we surmised that the government would shortly be introducing a new set of legislative amendments. On this basis, we wanted to ensure that our FRPs solicited the necessary baseline data to document regulator compliance with any new legal obligations.

Our plan, therefore, is to provide regulators with a revised RFP to cover the 2020-21 period later this year, and to report the results in our next annual report.

Issues that Attracted our Attention

The Impact of the Canadian Charter of Rights and Freedoms on Registration Practices

The registration landscape in Ontario is influenced by court and tribunal cases that comment on the practices of regulators. One such decision was issued recently that could have material implications for how regulators test applicant competencies.

In the Ontario Superior Court of Justice -- Divisional Court decision of *Ontario Teacher Candidates' Council v. The Queen*, the court carefully explored the application of the *Canadian Charter of Rights and Freedoms* (the Charter) to the Mathematics Proficiency Test (MPT), administered by the Ontario College of Teachers (OCT).

A link to the court decision may be found [here](#).

The MPT is a new standardized math test that all candidates were required to pass to become certified as teachers in Ontario. In this decision, the applicants, who wished to join the teaching profession, sought a declaration that the MPT, and the provisions requiring it, violated section 15 (1) of the Charter, which specifies that every individual has the right to equal protection of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The court was required to decide whether the MPT had a disproportionately adverse impact on entry to the teaching profession for racialized teacher candidates. The evidence in this case pointed to significant disparities in success rates on standardized testing based on race, including statistical evidence of racial disparities with respect to the MPT, in particular.

The court ultimately ruled that the MPT infringes section 15(1) and could not be justified under section 1 of the Charter (based on reasonable legal limits that could be justified in a free and democratic society). It further concluded that the government had not discharged its burden of showing that (1) the MPT minimally impairs the rights of racialized teacher candidates and (2) alternatives to substitute for the MPT were not reasonably available.

The court commented that there is an under-representation of racialized teachers in Ontario schools and that racialized students benefit from being taught by racialized teachers. The court concluded that the legislative provisions that created the MPT were of no force and effect. It should be noted that the Ontario government has appealed this decision to the Court of Appeal for Ontario.

This decision raises a number of important implications for regulators. First, based on the case's embedded reasoning, and to promote fairness in their registration practices, regulators should consider assessing whether:

- their current testing methodologies create differential impacts on racialized candidates or applicants from different national or ethnic origins or of colour, which are also Charter protected grounds; and
- they need to collect race-based data to inform this analysis.

In addition, if a regulator's testing methodology routinely scores international applicants lower than domestic ones, the regulator should consider whether these approaches are unnecessarily penalizing international candidates without giving them credit for other skills and competencies that they bring to their professions or trades. This would be the case particularly for applicant's who were close to achieving a passing grade.

It is important for regulators to regularly exercise flexibility in assessing test scores, especially in situations where candidates are otherwise competent to succeed in their professions or trades. They should also be aware that sections 15(2) of the Charter, and section 14(1) of the *Ontario Human Rights Code*, provide them with legal flexibility to establish programs that ameliorate, relieve hardship or disadvantage, or achieve equal opportunity for those whose rights are protected.

Regulators should take the time to consider how they could meaningfully apply these provisions to increase the number of candidates who are registered.

The Challenge of Obtaining Residency Positions for Internationally Trained Medical Graduates

In our last annual report, we observed that the under-utilization of skilled talent in the province is best exemplified by the situation involving internationally trained physicians. This is a longstanding and difficult issue for the individuals involved.

We noted, at the time, that, under the current matching system for residency positions, only 200 out of a total of 1,183 of these opportunities (or about 17 %) were allocated to international medical graduates (IMGs) in 2020. This category includes both Canadian and international students who have trained abroad.

In addition, in 2021, only 12.3% of IMGs received a residency match. This figure has varied from 8.5% to 12.5% in the 11-year period from 2010 to 2021. By comparison, virtually all candidates who trained in Ontario medical schools found a match.

While we acknowledged that the residency matching process involves the balancing of a number of interests, the available statistics point to an underlying unfairness in the system that detrimentally impacts IMGs and that further deprives the province of a group of highly skilled immigrants. We promised to proactively continue this dialogue in the months to come to provide advice to decision-makers consistent with our statutory mandate.

Our office was, therefore, gratified to hear that, on March 15, 2022, the Ontario government announced that it would be funding a total of 160 new undergraduate seats and 295 postgraduate medical positions over a period of five years. We understand that MOH plans to initiate consultations with stakeholders on the implementation of this scheme. It is our hope that a substantial percentage of the available residency spots can be used for IMGs.

Challenges Relating to the Covid-19 Pandemic and the Canadian Experience Requirement

In our last annual report, we also wrote extensively on how the Covid-19 pandemic had impacted the registration journeys of applicants to the professions and trades, and the challenges associated with the Canadian experience requirement. In both cases, our plan was to initiate discussions with stakeholders to provide appropriate advice to regulators and government ministries, and to disseminate best practices.

Given that both these topics have now been addressed by legislative amendments to FARPACTA, we have decided to formally close out these projects and to devote our attention to developing operational guidelines to assist regulators to comply with their new legislative obligations regarding these two subjects.

Performance Measurement Framework and The OFC's Client Satisfaction Survey

In 2021, the OFC articulated four new interim performance indicators to constitute its new performance measurement framework. As our office transitions to its new risk-informed compliance framework and awaits the operationalization of the FARPACTA and RHPA legislative amendments, we concluded that it would be prudent to maintain these interim measures.

These metrics are designed to test whether the OFC is taking proactive steps to encourage and assist regulators to improve their fair registration practices. These performance indicators are set out below:

- The annual reduction in the number of professions that the OFC places in its medium to high-risk compliance categories (20% reduction annually).
- The number of best (commendable) practices that the OFC collects and disseminates to the professions on an annual basis (50 new best practices annually. 56 best practices were included in the OFC's new Legal Obligations and Best Practices Guide, and others have been included in the OFC's newsletters).
- The number of events and webinars that the OFC holds, and the publications that it issues on an annual basis (18 items in 2021-22, including monthly Newsletter publications, surveys, the OFC's annual report and business plan, and webinars in collaboration with our system partners (e.g., CNAR, HPRO)). In addition, the OFC organized eight roundtables on its third party service provider project).
- The percentage of regulators and other stakeholders that identify the OFC as an effective or highly effective regulator and service delivery agency (80% benchmark).

To address the fourth performance indicator, in December 2021, the OFC distributed its first ever client satisfaction survey to the 41 professional regulatory bodies for which it has oversight. Among other things, the survey revealed that 83% of regulators view the OFC as an effective or highly effective regulator and service delivery agency, thus surpassing the 80% benchmark.

We posed a total of 16 questions to respondents and achieved a high survey response rate of 75%. We obtained an impressive overall satisfaction rate of 90% as the median satisfaction score for the 11 quantitative questions in the survey.

The OFC scored the highest client satisfaction rates for the questions relating to staff professionalism (100%), steps to assist regulators to understand the office's new risk-informed compliance framework (97%), consultation with regulators (93%) and the OFC's adherence to modern regulator principles (93%).

The office achieved lower client satisfaction scores on questions pertaining to collaboration with regulators to solve more complex or longstanding issues or problems (63%), the relevance and timeliness of OFC communications products (67%), OFC staff availability to provide insights and/or advice on issues that the regulator considered to be urgent or important (80%) and on the statement that the OFC has been an effective regulator and service delivery agency (83%).

We also received some very useful open-ended comments from regulators, which we are now carefully analyzing. For more detailed information on the survey results, please follow this [link](#).

Next year, our office plans to extend the reach of the survey to include other stakeholders.



Regulator feedback from the OFC's 2021 Client Satisfaction Survey:

"The relationships with the staff in the OFC office have been extremely collegial and collaborative. We commend the OFC on the progressive approach that the office has taken to fulfill its obligations under the legislation, and we look forward to a productive year ahead."

"The OFC has done an outstanding job in extremely challenging times to ensure that regulatory bodies continue to ensure fairness in their certification processes. The OFC's regular communications and consultations have supported regulators in these efforts."

Appendix 1: Financial Statements

Office of the Fairness Commissioner
Statement of Operations Period from April 1, 2021 to March 31, 2022 Revenues: Year Ended March 31, 2022 Ministry of Labour, Immigration, Training and Skills Development

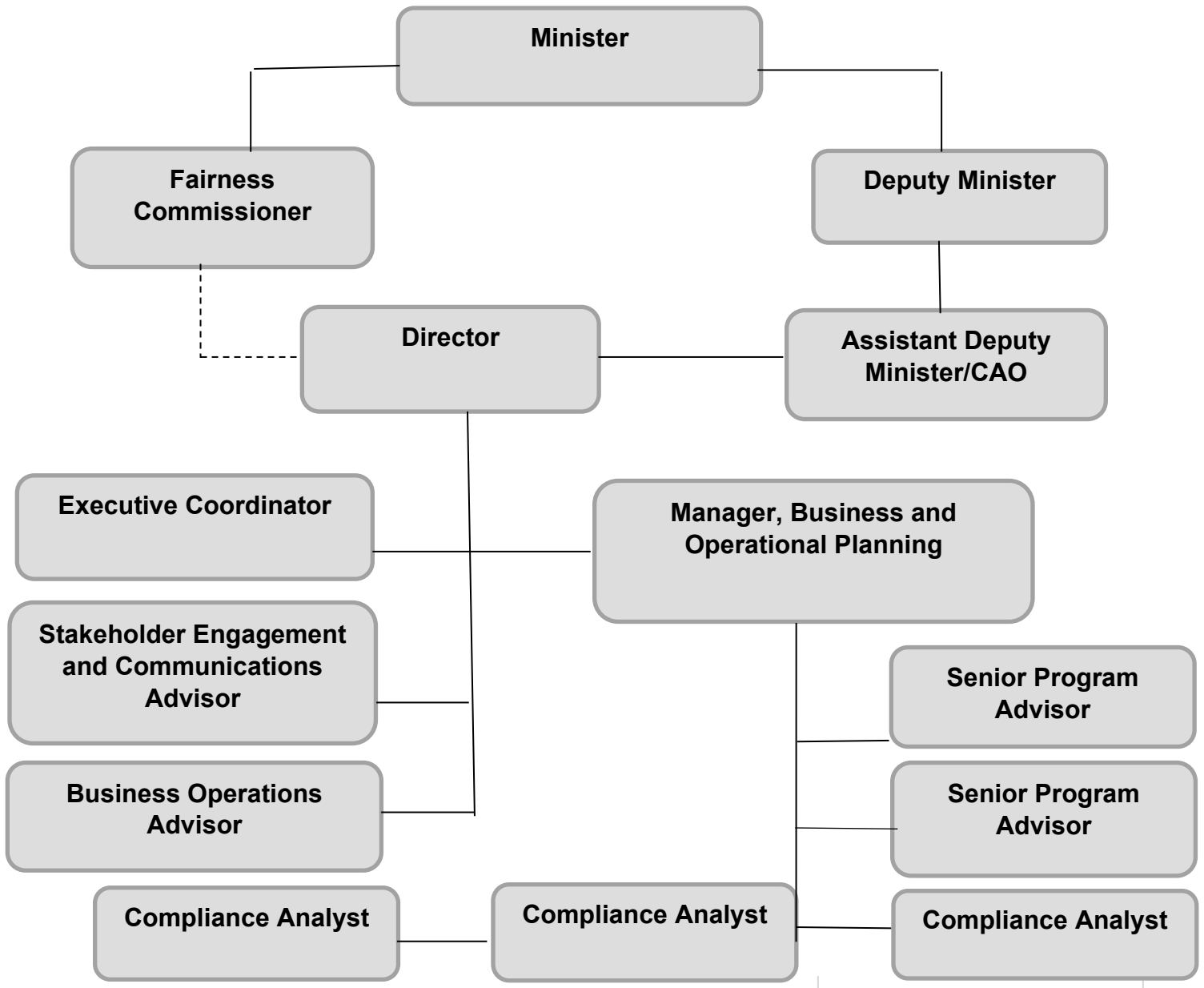
Expenditure Standard Account	2021-22 Budget	Actual
Salaries and Wages	\$800,300.00	\$1,020,278.74*
Employee Benefits	\$119,500.00	\$129,339.08
ODOE	\$483,300.00	\$79,317.34
Total	\$1,403,100.00	\$1,228,935.16

* Please note the increase in the salary and wages line reflects the hiring practices of the office during the period and includes salary and benefit payments to the full-time Fairness Commissioner

Appendix 2: Organization Chart

OFFICE OF THE FAIRNESS COMMISSIONER

ORGANIZATIONAL STRUCTURE





FAIRNESS COMMISSIONER

COMMISSAIRE À L'ÉQUITÉ

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

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