

THE FAIR ACCESS LAW AND REGULATORS' RESPONSIBILITIES



The *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, (FARPACKTA) governs fair access to the regulated professions and compulsory trades. The act amends Schedule 2 to the *Regulated Health Professions Act* (RHPA) to include similar provisions.

The vision of the legislation is that all qualified applicants may attain licensure, regardless of their places of training.

The rationale is that fair access to registration is in the public interest. It enables qualified applicants to meaningfully apply their professional skills and expertise to meet the needs of Ontarians and to contribute to the economy of the province.

Regulators are accountable to the public for fulfilling their obligations, as summarized below.

All applicants can expect:	All regulatory bodies must:
Information ¹	<ul style="list-style-type: none"> provide clear information about registration requirements, processes, timelines and fees
Timely decisions, responses and reasons ²	<ul style="list-style-type: none"> make registration decisions, and provide written reasons for those decisions, within a reasonable time
Internal review or appeal ³	<ul style="list-style-type: none"> offer an internal review or appeal, including an opportunity for applicants to submit arguments and supporting documents
Information on appeal rights ⁴	<ul style="list-style-type: none"> inform applicants of any rights they have to request a further review or appeal of the registration decision
Documentation of qualifications ⁵	<ul style="list-style-type: none"> provide information about the documentation that must accompany an application to demonstrate qualifications
Fair assessment of qualifications ⁶	<ul style="list-style-type: none"> conduct assessments in a way that is transparent, objective, impartial and fair, and take reasonable measures to ensure that any external assessors follow these principles ensure adequate training of all individuals who assess qualifications or make registration decisions
Training ⁷	<ul style="list-style-type: none"> provide training for individuals who: <ul style="list-style-type: none"> – assess qualifications – make registration decisions – make internal review and appeal decisions ensure that training includes the following topics: <ul style="list-style-type: none"> – how to hold hearings – special considerations that may apply in assessing applicants and the process for applying those considerations
Access to records ⁸	<ul style="list-style-type: none"> grant applicants, upon written request, access to records related to their application, with certain legal limitations

¹ FARPACKTA, s. 7; Schedule 2 to RHPA, s. 22.3.

² FARPACKTA, s. 8 and s. 9(1).

³ FARPACKTA, s. 9(2-3, 5); Schedule 2 to RHPA, s. 15, s. 18 and s. 19.

⁴ FARPACKTA, s. 9(4); Schedule 2 to RHPA, s. 20, s. 21, and s. 22.

⁵ FARPACKTA, s. 10(1); Schedule 2 to RHPA, s. 22.4(1).

⁶ FARPACKTA, s. 10(2); Schedule 2 to RHPA, s. 22.4(2).

⁷ FARPACKTA, s. 11; Schedule 2 to RHPA, s. 22.4(3)

⁸ FARPACKTA, s. 12; Schedule 2 to RHPA, s. 16.

Fair Access Principles

Under the fair access law, regulators must provide registration practices that are **transparent, objective, impartial and fair**.⁹ The Office of the Fairness Commissioner interprets these principles as follows:

Transparency

A process is transparent if it is conducted in such a way that it is easy to see what actions are being taken to complete the process, why these actions are taken, and what results from these actions. In the regulatory context, transparency of the registration process encompasses the following:

- *Openness*: having measures and structures in place that make it easy to see how the registration process operates
- *Access*: making registration information easily available
- *Clarity*: ensuring that information used to communicate about registration is complete, accurate and easy to understand

Objectivity

A process or decision is objective if it is based on formal systems, such as criteria, tools, and procedures that have been repeatedly tested during their development, administration and review and have been found to be valid and reliable. In the regulatory context, objectivity of systems encompasses the following:

- *Reliability*: ensuring that the criteria, training, tools and procedures deliver consistent decision outcomes regardless of who makes the decision, when the decision is made, and in whatever context the decision is made
- *Validity*: ensuring that the criteria, training, tools and procedures measure what they intend to

Impartiality

A process or decision is impartial if the position from which it is undertaken is neutral. Neutrality occurs when actions or behaviours that may result in subjective assessments or decisions are mitigated. Impartiality may be achieved by ensuring that all sources of bias are identified and that steps are taken to address those biases. In the regulatory context, impartiality encompasses the following:

- *Identification*: having systems to identify potential sources of bias in the assessment or decision-making process (for example, sources of conflict of interest, preconceived notions, and lack of understanding of issues related to diversity)
- *Strategies*: having systems to address bias and enable neutrality during the assessment and decision-making process (for example, training policies that address conflict of interest, procedures to follow if bias is identified, and using group deliberation and consensus strategies to come to decisions)

Fairness

A process or decision is considered fair in the regulatory context when all of the following are demonstrated:

- *Substantive fairness*: ensuring the fairness of the decision itself. The decision itself must be fair, and to be fair it must meet 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*: ensuring the fairness of the decision-making process. 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 to practise.
- *Relational fairness*: ensuring that people are treated fairly during the decision-making process by considering and addressing their perception about the process and decision.

⁹FARPACKTA, s. 6; Schedule 2 to RHPA, s. 22.2.