



# Annual Report of the Office of the Fairness Commissioner 2020-2021

The Path Forward



**FAIRNESS COMMISSIONER**  

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**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 and performs an important oversight role across Ontario's regulated professions, health colleges and the Ontario College of Trades. Its mandate is to help ensure that the registration processes in place at these organizations are transparent, objective, impartial and fair. The work of the OFC is designed to provide better outcomes for applicants with a desire to join these bodies, including internationally trained professionals, who wish to practice at the most capable level in their chosen vocation, trade or profession.

### A Personal Note

This annual report covers the period from April 1, 2020 to March 31, 2021. I was initially appointed as Fairness Commissioner in January 2020. Since I was also serving as Ontario's Interim Deputy Attorney General at the time, I was only able to assume my new assignment on a full-time basis in August 2020.

The work of our office has historically been animated by the perspectives of the commissioner, I thought it fair to share a bit of my personal background, along with my motivations, for assuming this position.

For much of my career I have worked as a public servant, most recently at the Ontario Ministry of the Attorney General. I have been involved in a variety of programs with a focus on the justice system, the vulnerable and the challenges of equity-seeking groups. In these roles, I learned how to promote ideas, build stakeholder coalitions and move initiatives through the system. As I settle into my new role, I am putting these skills to good use.

I believe that my personal background has helped me to empathize with the situations of stakeholders who are seeking change. My father was an immigrant, and my mother's family came to Canada only several years before she was born. I grew up with an awareness of being a child of immigrants, with first-hand knowledge of how hard newcomers must work to make a better life for themselves and their families.

Regrettably, neither of my parents was able to attend high school. My father was interned in a concentration camp prior to attending high school. My mother's family was struggling financially. After grade seven, and despite being a "straight A student," she needed to leave school to support her family. I was the first person in my immediate family to have a university education.

To fast forward to 2021, both my mother-in-law and father-in-law are internationally trained physicians. They each practiced in Europe and Africa. My father-in-law worked as a physician and surgeon in East Africa, and delivered hundreds of

babies. When my in-laws immigrated to Canada, they discovered that they could not practice medicine in this country, nor were they able to find related positions through which they could share their considerable wisdom and experience.

I have been able to witness first-hand the terrible economic and social loss that arises when skilled professionals are not able to fulfill their true potential, both at a personal and societal level.

During the 12-month period to which this report relates, the OFC embarked on a number of 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 needed to confront unprecedented challenges associated with the COVID-19 pandemic. Our office worked hard to develop and refine our policy and program materials, and to obtain the perspectives of stakeholders on proposed approaches.

I wish to specifically commend the work of OFC staff. Despite working from home since mid-March 2020, staff have demonstrated remarkable perseverance and productivity in a virtual setting. The many initiatives outlined in this annual report are a testament to their resilience and dedication.

During the pandemic, OFC staff also built on our previous work to develop a new innovative Workplace Charter. The Charter, which we have adjusted to meet our changing environment, provides the foundation for a respectful workplace culture and collaborative work environment, which will help everyone in our office to achieve both individual and team success.

In October 2019, our office joined the newly constituted Ministry of Labour, Training and Skills Development (MLTSD). 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 be part of such a collaborative ministry.

### **Our Stakeholder Ecosystem**

Our stakeholder ecosystem is extensive and multi-layered, and mirrors the journey of applicants through various stages of the immigration, education, credentials assessment, registration and employment processes. Figure 1 on page 17 of this report provides a visual representation of this ecosystem.

While our office regularly engages with many stakeholders, our relationships with Ontario's 40 regulators is particularly important as they are directly accountable for implementing fair registration processes. During the year, our office worked hard to strengthen these relationships, and I met personally with all 40 of them to discuss

their accomplishments and challenges, and to offer insights on how to further improve their practices.

We have also deepened our ties with immigration settlement and labour market groups, assessment and testing organizations that offer services to regulators, government bodies with mandates that impact our work, and a wide variety of other groups and subject-matter experts. We also meet monthly with officials from the Ontario Ministry of Health, which has a broad supervisory role for 26 health colleges for which we are jointly responsible.

We have also established strong ties with groups whose mandates straddle federal-provincial areas of responsibility across these sectors and with fairness commissioners/offices in five other Canadian jurisdictions.

We have done a lot of listening during this period to better understand how regulators, applicants and key stakeholders have been impacted by the Covid-19 pandemic and other shifts in fair registration practices. We have also discussed new ideas and approaches across these sectors to better understand where opportunities for reform and innovation are present. We have sensed an openness to do things differently and to build on accomplishments that have been achieved to date.

We take stakeholder engagement seriously. We have consulted broadly on a number of policy initiatives, including our new risk-informed compliance framework and our project on accountability relationships involving regulators and third-party service providers (i.e., those organizations that provide services to applicants on behalf of regulators). These discussions have materially improved the quality of our work products.

### **A Snapshot of Our Accomplishments**

During the year, the OFC took important steps on its journey to become a more strategic regulator. As just mentioned, we consulted on the development of a flagship risk-informed compliance framework for our agency, supported by a list of modern regulator principles. The underlying premise of this framework is that the OFC will allocate more of its finite compliance resources to those regulators that are failing to keep pace in developing fair registration practices.

The objective of this strategy is to raise the performance of *all* regulators in order to achieve better outcomes for applicants. The first elements of this framework came into effect on April 1, 2021, with full implementation scheduled for April 1, 2022. We will more fully highlight the attributes of this new model later in this document.

Our office also initiated, or continued, work on a variety of other high-priority projects. These addressed:

- the impacts of the COVID-19 pandemic on the continuity of registration processes across our professions;
- how to strengthen the accountability relationship between regulators and third-party service providers that have assumed an increasingly more prominent role in applicant assessment and testing processes;
- opportunities for regulators to more routinely apply an inclusion and anti-racism lens to their registration mandates;
- mechanisms to reduce reliance on Canadian experience requirements that are established under law or by policy;
- how the OFC can add value as a trusted collaborator and center of excellence; and
- ways to simplify our legislative compliance framework.

We also reinstated the practice of issuing our popular *OFC Newsletter* publication. In the period between January and March 2021, we issued three editions featuring articles on such topics as:

- Canada's Compliance with the Lisbon Convention;
- the Collection and Analysis of Race-based Data;
- the Impact of COVID-19 on the Continuity of Registration Practices across Professions; and
- highlights of our 2020 Annual Meetings with Regulators.

The *OFC Newsletters* are posted on our OFC website. To access our [Newsletters](#), please follow this link.

### **Successes and Challenges**

Despite the challenges posed by the COVID-19 pandemic, the statistics indicate that Ontario regulators registered 51,116 applicants in 2020, compared to 66,305 in 2019 (a decrease of approximately 23 per cent). This was a remarkable achievement given the need for regulators to pivot to maintain their operations and the decrease in the influx of internationally trained professionals owing to immigration-related travel restrictions. The pandemic clearly has been a defining feature of the registration landscape over the last 12 months.

In previous years, the OFC has included tables in its annual reports that provide more detailed information on registration outcomes and trends. Since the OFC is migrating to a new database system, updated statistical information for 2020 is not currently available and will be provided via an *OFC Newsletter* in 2021.

Despite the many successes that have been achieved, there remain a number of barriers and challenges that inhibit the imperative to achieve fair and efficient registration practices in the province. This is the case especially for internationally trained professionals. I want to highlight four such issues that deserve special attention. These relate to:

1. Labour-market priorities and system coherence.
2. The current process for matching internationally trained physicians to residency positions.
3. The intersection of technology and fair registration practices.
4. A more nuanced interpretation of the public interest.

### **Labour-Market Priorities and Overall System Coherence**

The available statistics indicate that Ontario's workforce is aging. Everyone agrees that the province requires trained workers to replenish employees who have retired or are about to leave the workforce.

Newcomers represent an important source of new entrants into the labour market. Net migration (derived from both immigration and inter-provincial movement) is projected to account for a full 83 per cent of all population growth in the province over the 2019 to 2046 timeframe.<sup>1</sup> This means that only 17 per cent of this growth will come from in-province increases in population.

On this basis, the need to promote fair and timely access to the professions and compulsory trades -- with a focus on removing barriers that unnecessarily restrict access for internationally trained individuals and those working in other provinces -- constitutes an important component of a strategic labour-market plan.

This objective remains challenging. In 2019, for example, the unemployment rates of very recent immigrants stood at 9.5 per cent and 6.5 per cent for recent immigrants. This compares with 5.5 per cent for Canadian-born workers.<sup>2</sup>

It is critical that this gap be closed and that regulators continue to focus on ways to streamline registration processes, particularly for internationally trained candidates. It is an economic and social tragedy when the skills and talents of professionals who immigrate to Ontario are met by barriers to fair and timely registration.

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<sup>1</sup> Ontario Ministry of Finance, Ontario Population Projections Update, 2019-2046. October 2020.

<sup>2</sup> Centre for the Study of Living Standards, The Improved Labour-Market Performance of New Immigrants to Canada, 2016-2019. June 2020.

There is a critical need to improve co-ordination among the various parties involved in the immigration, labour market, post-secondary education, professional registration and skills training, and employment spheres to help ensure that more applicants – particularly internationally trained candidates – can more easily move through the steps in the process and obtain high-quality jobs.

Our office will continue to explore approaches that have worked in other jurisdictions and to discuss these within government and with our stakeholders. I believe that the recent decision to consolidate labour-market and immigrant programming into the MLTSD will serve as an important catalyst for this change.

### **The Challenge of Obtaining Residency Positions for Internationally Trained Physicians**

The most significant example of the under-utilization of skilled talent relates to the situation involving internationally trained physicians. This is a longstanding issue, which my predecessors have raised on many occasions in the past.

Over the last year, our office has met with officials from a number of organizations involved in assessing and registering these individuals, and with groups representing international medical graduates (IMGs). These discussions have sharpened our understanding of a highly complex and, at times, opaque process.

The nub of the problem is that, in Ontario under the current matching system for residency positions, only 200 out of a total of 1,188<sup>3</sup> of these opportunities (or about 17 per cent) were allocated to IMGs in 2020. This category includes both Canadian and international students who have trained abroad.

In addition, in 2021, only 12.3 per cent of IMGs received a residency match. This figure has varied from 8.5 per cent to 12.5 per cent in the 11-year period from 2010 to 2021<sup>4</sup>. By comparison, virtually all candidates who trained in Ontario medical schools were able to find a match.

While we acknowledge 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 international medical graduates and that further deprives the province of a group of highly skilled immigrants. We plan to proactively continue this dialogue in the months to come to provide advice to decision-makers consistent with our statutory mandate.

Finally, although we have highlighted the situation with IMGs, there are several other professions in the province that also need to fundamentally reassess how they deal with internationally trained applicants.

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<sup>3</sup> Council of Ontario Universities

<sup>4</sup> Canadian Resident Matching Service

## The Intersection of Technology and Fair Registration Practices

I will highlight two examples in this section. The first relates to the situation of internationally trained dentists and dental students. The Royal College of Dental Surgeons of Ontario (RCDSO) delegates to the National Dental Examination Board (NDEB) the responsibility for assessing the equivalency of dental programs offered by non-accredited general dentistry schools.

The NDEB, which is a pan-Canadian organization, undertakes this role by administering three examinations to internationally trained dentists trained through these programs. One of these is called the Assessment of Fundamental Knowledge (AFK).

In December 2020, the NDEB administered the AFK examination. In February 2021, it made the decision to void the examination results, based on what it described as an occurrence of systemic cheating. This decision had a significant personal and financial impact on the internationally trained dentists who wrote the test.

This determination turned on the NDEB's assessment that test questions used in prior examinations had been circulated to internationally trained dentists who were scheduled to write the December 2020 examination. The test takers have raised concerns with our office about the severity of, and justification for, the action taken by the NDEB. Understandably, this would be a particularly unfair outcome for individuals who wrote the examination in good faith and followed all the rules.

The second example involves the Canadian Alliance of Physiotherapy Regulators, another pan-Canadian organization. In March 2021, the Alliance took the progressive step of organizing a virtual clinical examination for applicants to the College of Physiotherapists of Ontario. This initiative would avoid the challenges associated with in-person examinations during COVID-19.

Unfortunately, the examination platform was overwhelmed and the examination could not continue. It is not yet clear when a new examination can be scheduled. Coupled with a regulatory framework adopted by the College of Physiotherapists of Ontario that lacks flexibility, this situation had meant that a sizeable number of applicants are not able to proceed with their registration processes and career aspirations. It has also deprived the public of a new pool of professional talent.

In both cases, the OFC is reviewing information obtained from impacted parties to ascertain how to assist these two colleges to address the underlying issues:

Examples such as these also raise several important considerations, such as:

1. the responsibility of regulators to not unreasonably delay their registration processes when external circumstances interfere with the normal scheduling of events;
2. the validity and necessity of clinical examinations, particularly when circumstances make it challenging to run them safely during a pandemic;
3. the need for regulators and third-party service providers to jointly develop risk identification and mitigation strategies and to identify a Plan B when normal registration processes are disrupted; and
4. the importance of instituting more timely and empathetic communications protocols to disclose and explain these types of situations to applicants.

### **A More Nuanced Interpretation of the Public Interest**

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

The term “public interest” is commonly defined as “the welfare and well-being of the general public.” Understandably, professional regulators tend to equate this concept principally with safeguarding public health and safety.

There is a clear legislative recognition, however, that professional regulators must also fulfill certain labour-market imperatives as part of their public-interest mandate. For example, section 2.1 of Schedule 2 of the Regulated Health Professions Act, 1991, specifies that:

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

The OFC believes that, to effectively act upon this important objective, regulators need to implement fair and efficient registration processes. It is imperative that registration pathways proceed expeditiously both in normal times, but particularly during emergency situations. It is not acceptable, for example, that registration processes stop applicants “in their tracks” during a pandemic.

Regulators must also guard against the temptation to overly exploit the theme of public health and safety as a way of avoiding uncomfortable discussions about how to more fairly and efficiently move qualified applicants through the registration system.

The difficult task of balancing the various aspects of the public interest will continue to place enormous challenges on regulators. They must continue to reflect on what the public interest means in their own contexts and to have the courage to make fair and empathetic decisions.

### **The Path Forward**

In the year ahead, we will continue to work with the government, applicants, regulators and our stakeholders to help ensure that qualified professionals and tradespersons are able to contribute to Ontario society to their full potential. We remain optimistic that the challenges that we have identified can be successfully resolved.

In closing, I would like to thank everyone with whom we work, including our committed staff, for your continuing collaboration, perseverance and support.

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, health colleges and compulsory trades. This authority is set out in two provincial statutes, which are broadly similar in nature.

These are the Fair Access to Regulated Professions and Compulsory Trades Act, 2006 (FARPACTA), which governs the 13 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 (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 are able to contribute to Ontario's society according to their skills, training and aptitudes.

## 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 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 process 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, 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.

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:

- The provision of information to applicants.
- The need to make timely decisions with accompanying responses and reasons (FARPACTA only).
- The provision of 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.
- The right of an applicant to obtain access to records relevant to their application.

## 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:

- assessing the registration processes of regulated professions;
- specifying when a regulator's registration practices should be reviewed, when a fair registration practices report should be filed, and the form of the required reports;

- 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 about their registration processes 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 MLTSD Minister on matters related to the administration of the legislation (similar provisions exist in the RHPA); and
- reporting to the MLTSD Minister and other ministers on registration practices relating to internationally trained individuals (not contained in the RHPA).

Other provisions contained in the legislation elaborate upon these authorities.

The OFC now oversees the licensing practices of 40 regulatory bodies. These bodies cover virtually every sector of the province's economy. The 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.

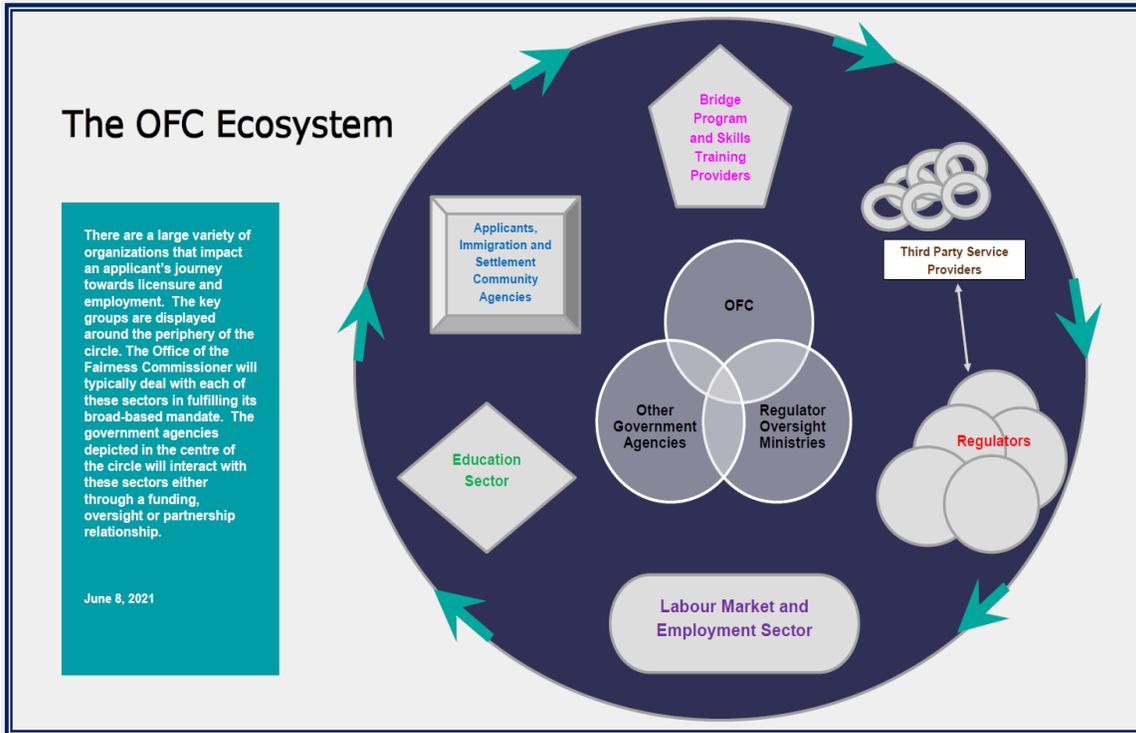
In undertaking these responsibilities, the OFC seeks to identify artificial or systemic barriers, and associated red tape, that can impede the ability of qualified applicants to work in their chosen profession or compulsory trade. These barriers are especially problematic for internationally trained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

In addition, as part of the MLTSD, the OFC can 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 met.

## **The Fair Access Stakeholder Ecosystem**

The key beneficiaries of fair access legislation are the individuals who apply for professional registration, whether they are domestically or internationally educated and trained. While the legislation prohibits the Fairness Commissioner from interceding 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 provided some examples of these situations earlier in the report.

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



As Figure 1 illustrates, the applicant's journey through the registration process can be complex and impacted by multiple organizations. On this basis, our stakeholder ecosystem is unusually large and includes the following groups:

*Domestic and Internationally Trained Applicants and Community Agencies that Serve Them:*

- associations representing applicants
- community-based organizations that oversee programs involving immigrant settlement, workforce integration and skills development

*The Education Sector:*

- members of academic institutions
- the Council of Ontario Universities

*Regulators and Their Organizations*

- the 40 professional regulators, health colleges and the Ontario College of Trades

- regulatory umbrella organizations, including:
  - Ontario Regulators for Access Consortium
  - Health Profession Regulators of Ontario
  - Canadian Network of Agencies of Regulation

#### *Third-Party Service Providers:*

- credential assessment agencies
- national alliances
- testing bodies

#### *Government Ministries and Agencies:*

- various divisions of the Ministry of Labour, Training and Skills Development
- Federal Department of Immigration, Refugees and Citizenship Canada
- Canadian Information Centre for International Credentials (CICIC)
- Ontario Human Rights Commission
- government oversight and advisory agencies (e.g., The Ombudsman's Office of the Information and Privacy Commissioner, Regulatory Compliance Ontario)
- fairness commissioners/officers in five other Canadian jurisdictions

#### *Oversight Ministries*

- the eight provincial ministries with oversight responsibilities for professional regulators and the health colleges

#### *The Labour Market and Employment Sector*

- employer associations
- trade unions

## **Our Office's Activities**

The government's decision to appoint a full-time Fairness Commissioner has helped to enable the OFC to roll out a robust list of operational and policy-based initiatives. While the OFC's main objective is to improve outcomes for applicants, it has also taken steps to assume the mantle of a modern regulator and to create efficiencies for all participants in the system.

During the 2020-21 fiscal year, the OFC focused its resources on eight inter-related priority initiatives. These are more fully described below.

## The Impacts of COVID-19 on the Continuity of Registration Processes across Professions and Trades

As the COVID-19 pandemic unfolded, our office carefully monitored the consequences of the disruption on regulators and applicants alike. In looking back, we felt it important to obtain an informed understanding of the challenges that regulators experienced during this period, along with the successes they achieved in overcoming those challenges.

In November 2020, we distributed a pulse survey to the regulators and health colleges under the OFC's authority with this objective in mind. Significantly, almost all of the organizations surveyed (98 per cent) responded.

We found that, in general terms, regulators were able to pivot quickly to address novel and unprecedented challenges. In many cases, however, regulators and third-party service providers were required to cancel knowledge-based and/or clinical examinations. It must be appreciated that, when the registration cycle is disrupted, it is the applicant who suffers the most acute consequences.

As it turned out, and despite the impact of the COVID-19 pandemic, the registration process for applicants continued to work fairly well. Based on preliminary figures, in 2020, regulators received 79,056 applications compared to 90,715 in 2019 (a decrease of approximately 13 per cent).

In 2020, individuals who received their training in Ontario filed 56,539 applications (72 per cent in total) compared to 68,194 (75 per cent) in 2019. Additionally, 4169 (or 5 per cent) came from candidates who were educated elsewhere in Canada compared to 4,954 (or 5 per cent) in 2019. Finally, 16,501 (or 21 per cent) originated from individuals who were educated internationally compared to 17,528 (or 19 per cent) in 2019. In 2020, there were an additional 1,847 applicants (or 2 per cent) whose country of origin was not specified, compared to 39 (less than 1 per cent) in 2019.

The survey results also confirmed that there are high levels of resilience in the regulatory sector. There is also a great desire among regulators to develop creative and lasting solutions to address the issues arising from the pandemic. The results also pointed to several topics that require further attention and underscored a willingness among regulators to work with the OFC to explore these matters.

What follows is a high-level summary of some key survey results:

- 38 per cent of respondents experienced a reduction in the number of applications they received.
- 97 per cent confirmed they rely on third-party service providers to conduct assessments, and 82 per cent reported disruptions in this work. The most common challenges related to closure of examination facilities (86 per cent) and delays in receiving documentation (73 per cent).

- With respect to future risk mitigation strategies, 55 per cent of respondents plan to digitize or update IT infrastructure, 21 per cent will enhance employee remote work capabilities, and 13 per cent intend to change their examination formats.

The OFC separately confirmed that, of the 26 health colleges, 42 per cent indicated that they had cancelled their Objective Structured Clinical Examinations (OSCEs). However, only 12 per cent of the colleges are actively exploring technologies that will allow migration to a virtual examination platform.



Where these clinical examinations constituted a “non-exemptible” component of the registration process, one regulator, the Ontario College of Pharmacists, took proactive steps to persuade the Ministry of Health to amend this college’s regulation to allow applicants to be licensed provisionally. Other similarly situated regulators did not react in this fashion.

Regulators acknowledged that during the pandemic, three issues generated particular challenges for their organizations and applicants:

- the migration to virtually proctored examinations;
- the cancellation of OSCE or similar clinical examinations; and
- the need to address inflexible regulatory frameworks that precluded the conditional or provisional licensure of applicants.

In the survey document, the OFC also asked regulators what role our office could play to assist them in dealing with the new reality. Eighty-nine per cent of respondents indicated that the OFC should compile a list of best practices to be shared across the sector.

In addition, 83 per cent of respondents expressed a willingness to participate in a stakeholder community of practice to continue identifying common pandemic-related challenges and solutions. The OFC has since reached out to the Ontario Regulators Access Consortium to establish a partnership to develop these best practices. For further information about the survey, please [click here](#).

## The Establishment of a Risk-Informed Compliance Framework

In 2007, when the government of the day established the OFC, it became the first oversight body of its kind in Canada. Given the diversity of regulators for which it was responsible, the office determined that its compliance model should focus on understanding the particulars of each regulator's registration activities and collecting baseline information to inform this work.

Under this model, OFC staff would regularly monitor the progress that a regulator achieved through a process of cyclical assessments and reporting. The strategy which, in its formative stages resembled a one-size-fits-all approach, also depended on establishing collaborative working relationships with regulators to guide them towards achieving compliance with the new legislation.

With the passage of time, it has become clear that our office needs to better align its oversight activities with a more modern and targeted approach to compliance. The goal is to raise the performance of all regulators in order to achieve better outcomes for applicants. On this basis, the OFC has determined that it will allocate its finite compliance resources to those regulators that have not achieved as much progress as others in improving their registration systems.

Based on extensive consultations with subject-matter experts, regulators and other key stakeholders, the OFC has identified five modern principles that will underpin our work. These principles are as follows:

1. Our compliance approach will be evidence-based and risk-informed.
2. We will apply a proportionate approach to improve and promote compliance.
3. We will communicate, educate and offer guidance to regulators to promote and enhance compliance.
4. We will monitor, measure, evaluate and report on our activities and outcomes in order to adapt and improve our compliance activities.
5. We will share information and collaborate to reduce burdens and promote greater consistency.

To download the OFC's modern regulator placemat, please [click here](#).

The OFC will also employ a suite of compliance tools and work with regulators to improve their registration and assessment practices. These approaches will include education, outreach, peer discussions, the dissemination of best practices materials and tool kits, annual reporting requirements and more formal reviews of regulation practices designed to enhance compliance.

The OFC has also developed a complementary risk-informed compliance framework. Under this approach, the office will ascertain a regulator's risk profile by focusing both on its *historical performance* and by assessing how a number of pre-defined *forward-looking risk factors* will likely impact its future performance.

The historical performance indicators will, among other things, assess the nature and extent of compliance with material recommendations that the OFC has issued to a regulator. The OFC will examine:

- the degree of compliance with these recommendations;
- the level of a regulator’s motivation to comply;
- any court and/or tribunal decisions discussing a regulator’s registration practices; and
- the extent to which the regulator has adopted fair registration best practices.

The forward-looking risk factors will, in turn, look to such considerations as a regulator’s organizational capacity, the extent to which it exerts control over its assessment and registration processes, the regulator’s response to emergency situations, such as the COVID-19 pandemic, and whether it places an over-reliance on Canadian experience requirements.

The risk analysis will also consider two labour-market and fairness-related public policy considerations: first, are there critical labour shortages involving the occupational groups for which the regulator is responsible; and second, the application of an inclusion and anti-racism lens to registration decisions.

Following a robust consultation exercise, on April 1, 2021, the OFC launched this new framework, which will be implemented in a phased manner. In the first year of operation, the OFC will place a regulator in a provisional risk category based predominantly on its past performance. The new framework will fully come into effect on April 1, 2022. For more information on the components of the framework, please follow the link to the [Risk-Informed Compliance Framework and Policy](#).

## **Compliance with Legal Obligations**

During the fiscal year, the OFC initiated a companion project whereby the office has begun to review its 70 compliance practices with a view towards reducing their number and placing them in separate legal obligations and best practices categories. The project represents the latest chapter in the OFC’s efforts to work with regulators to help ensure that their registration practices are “transparent, objective, impartial and fair.”

This work will enable the OFC to more clearly communicate its expectations on how compliance with fair access legislation is to be achieved and to monitor actual performance against this compliance framework. The OFC also expects that the document will contain an associated list of fair registration best practices designed to improve the quality, timeliness and fairness of registration decisions, and to generally reflect excellent client-service principles.

The OFC plans to consult with stakeholders on this initiative in 2021.

## Accountability Measures for Third-Party Service Providers

Increasingly, regulators in Ontario are devolving important components of their assessment and registration processes to third-party service providers. The criticality of the work that such third parties perform has been driven home by the COVID-19 pandemic, where a number of service providers decided (or 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.”

During the 2020-21 fiscal year, the OFC initiated a project to better understand the relationship between regulators and the many third-party service providers that undertake work on their behalf.

The OFC particularly wishes to assess the accountability measures regulators have put into place with third parties. Are the measures sufficiently robust and do they incorporate appropriate risk mitigation and client communications strategies? The OFC will continue to work on this initiative in 2021-22, to include broad-based stakeholder consultations and the possible dissemination of one or more surveys.

## Development of an Inclusion and Anti-Racism Lens for the Registration of Professionals and Skilled Tradespersons

The registration of professionals and skilled tradespersons is subject to the same sources of institutional bias common to other broader public-sector activities. In this respect, regulators have recognized the need to identify and address inclusion and anti-racism issues that are likely to have a bearing on their registration decisions, particularly as they relate to internationally trained applicants. The OFC wishes to acknowledge and applaud their collective efforts.

The OFC also believes that it is important to build upon this proactive work with a view to developing an inclusion and anti-racism lens that focuses on applicant registration processes and to create other tools and best practices to broadly enhance cultural competency.

During 2020-21, the OFC began to engage regulators and other stakeholders on how such initiatives can best be launched and appropriately embedded into organizational cultures. The OFC is also exploring an opportunity to partner with Health Profession Regulators of Ontario to undertake aspects of this work, which could involve organizing a series of webinars and/or panel discussions.

## **Reducing the Impact of the Canadian Experience Requirement**

In 12 particular professions, registration rules specify that applicants must meet various “Canadian experience” requirements before the applicants are permitted to practice in their chosen field. Except for two of these noted professions, these requirements are either prescribed by statute or regulation.

Based on the OFC’s experience, this type of provision can unfairly inhibit the development of equivalent assessment measures and may simply be unnecessary to protect public health and safety. It also acts as a significant barrier which can prevent internationally trained professionals from fulfilling their professional ambitions.

The Ontario Human Rights Commission has also characterized such provisions as discriminatory in nature unless they can be properly justified. In 2020-21, the OFC laid the groundwork to begin consultations with interested parties on ways to mitigate the impact of Canadian experience requirements and to identify equivalent paths to help applicants achieve their career ambitions.

## **Establishing the OFC as a Centre of Excellence for Fair Registration Practices**

Based on consultations with regulators and other stakeholders, the OFC believes that substantial gaps exist in the sharing of information and best practices within the regulatory community. This is not surprising given the highly disparate sectors in which regulators operate.

On this basis, there is an opportunity for the OFC to augment its traditional education and consulting roles by, for example:

1. serving as a more proactive aggregator and disseminator of best practices;
2. designing and/or delivering a variety of training opportunities and shared learning experiences for participants;
3. establishing partnerships with other organizations; and
4. serving as a strategic advisor for ministries with oversight for specific professions or compulsory trades.

During 2020-21, the OFC began laying the foundations for this centre-of-excellence concept and plans to consult broadly with stakeholders on this topic in the next fiscal year.

## Digital Agency

Making useful resource materials available to the public, and gathering, storing and aggregating relevant data for use in our work, is central to the OFC's ongoing efforts to become a modern regulator. Over the past year, the OFC initiated a comprehensive initiative to reimagine our digital capabilities, evolving our website and the Fair Registration Practices (FRP) reporting tool by adding functionalities to make it more user-focused.

The process has been a challenging one, but much progress has been made. We put an interim solution in place to manage the FRP reporting process for 2020 data collection. The OFC website has been migrated to a new platform. A content review process is underway in which older content has been archived and fresh content will continue to be added.

The FRP tool upgrade is still under way. Regulator consultations on user requirements and beta testing are planned for the fall with a targeted completion date and launch of a new and improved system in the Winter of 2021.

## Performance Measurement Framework

### System-wide Metrics and the Historical Context

The OFC works with regulators on a continuous basis to help ensure that their registration processes are transparent, objective, impartial and fair. At the end of the day, the result should be that all qualified applicants—including internationally trained registrants—are able to obtain licensure, and ultimately become employed in a profession that corresponds to their training and competencies.

As such a system-wide performance metric would measure program impacts from multiple sources, our office does not believe that it would fairly or accurately evaluate the efficacy of our office's initiatives. We consider it important, however, to work with other organizations to ascertain how measures of this nature could be developed and refined.

In the past, the OFC has indicated that its goal of promoting fair registration practices will be achieved where "100 per cent of regulated professions achieve 100 per cent compliance with the fair access legislation." Given that the constituent elements of these compliance activities consist largely of process-related output measures, the OFC believes these measures lack precision and should no longer form the basis for assessing the office's performance.

## The OFC's Review of Its Performance Measurement Framework

In 2020-21, the OFC initiated a review of its strategic priorities. This included a process to identify a series of measures or indicators that could demonstrate how efficiently and effectively the office is operating. The OFC is working with the MLTSD's Strategic Partnerships and Evaluation Branch and the Data and Analytics Research Branch to help work through this analysis.

There are two key drivers that will inform this work. First, as mentioned earlier in this report, the OFC has adopted a new risk-informed compliance framework that is anchored by modern regulator and risk-management principles. These approaches will enable the OFC to better allocate its compliance resources to regulators with attendant opportunities to measure improvements in more tangible ways.

Second, the OFC is modernizing its technology and data management platforms. Among other things, this initiative is designed to assess whether the OFC is collecting optimal data sets for decision-making purposes.

Until this exercise is completed, the OFC has articulated four interim performance indicators that constitute its 2021-22 performance measurement framework. These metrics are designed to test whether the OFC is taking concrete and proactive steps to assist regulators to improve their fair registration practices. These performance indicators will focus on:

1. The annual reduction in the number of professions that the OFC places in its medium- to high-risk compliance categories.
2. The number of best (commendable) practices that the OFC collects and disseminates to the professions on an annual basis.
3. The number of events and webinars the OFC holds, and publications it issues, on an annual basis.
4. The percentage of regulators and other stakeholders that identify the OFC as an effective or highly effective regulator and service delivery agency.

# Appendix 1: Financial Statements

## Office of the Fairness Commissioner

### Statement of Operations

Period from April 1, 2020 to March 31, 2021

**Revenues:** Year Ended March 31, 2021

Ministry of Labour, Training and Skills Development

Expenditure Standard Account	2020-21 Budget	Actual
Salaries and Wages	\$796,900.00	\$963,232.60*
Employee Benefits	\$119,500.00	\$130,638.92
ODOE	\$887,100.00	\$192,437.43
<b>Total</b>	<b>\$1,803,500.00</b>	<b>\$1,286,308.95</b>

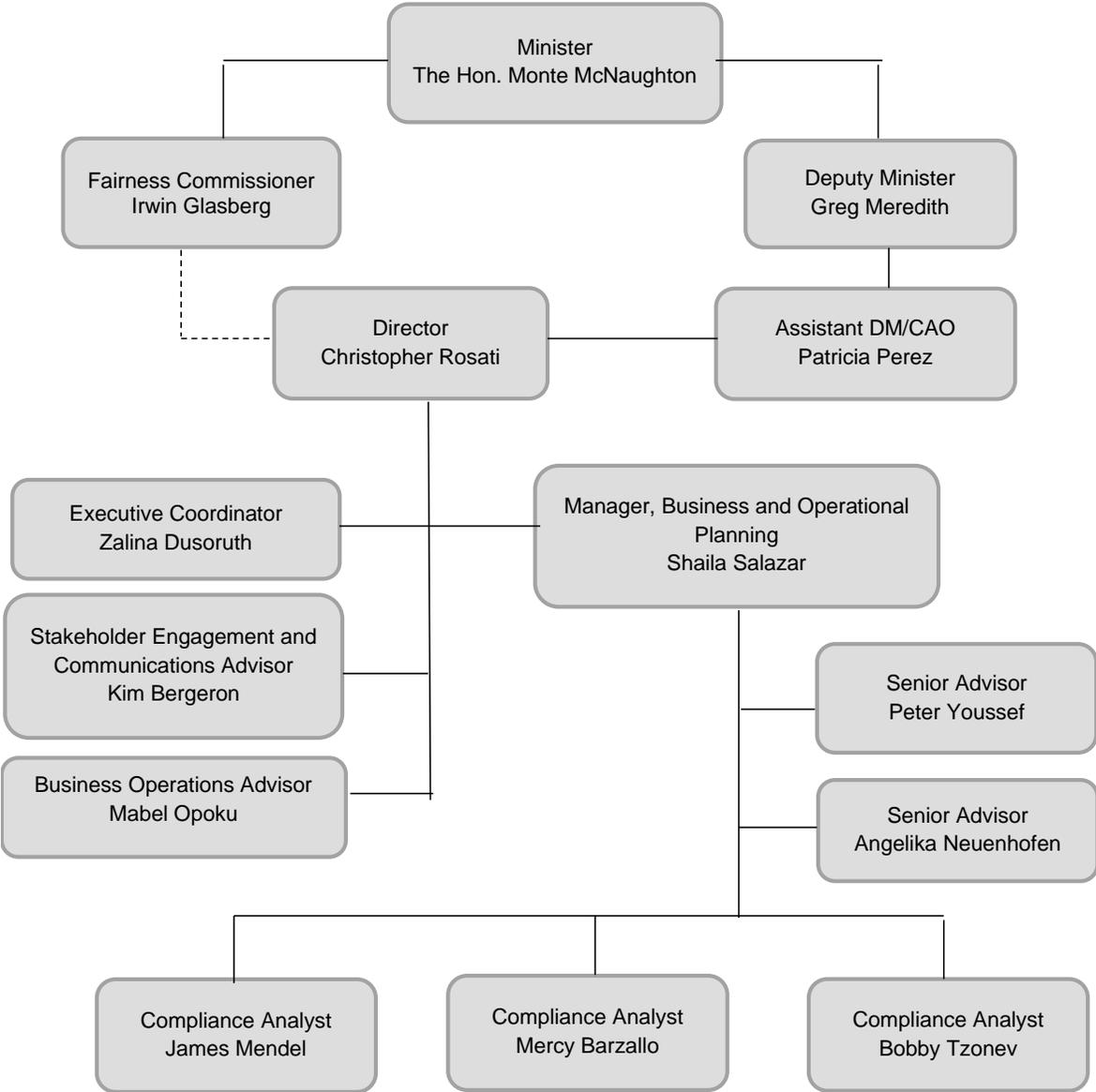
\* Please note the increase in the salary and wages line reflects the hiring practices of the office during the period and includes salary and benefit payments to the new full-time Fairness Commissioner

# Appendix 2: Organization Chart

## OFFICE OF THE FAIRNESS COMMISSIONER

### ORGANIZATIONAL STRUCTURE

(As described in Memorandum of Understanding between the Minister and The Fairness Commissioner)





**FAIRNESS COMMISSIONER**

**COMMISSAIRE À L'ÉQUITÉ**

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