



Audits of Registration Practices: Guidelines for Ontario's Regulatory Bodies

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The Office of the Fairness Commissioner is an arm's-length agency of the Ontario government, established under the Fair Access to Regulated Professions and Compulsory Trades Act, 2006. Its mandate is to ensure that certain regulated professions and trades have registration practices that are transparent, objective, impartial and fair.



AUDITS OF REGISTRATION PRACTICES: GUIDELINES FOR ONTARIO'S REGULATORY BODIES

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Message from the Fairness Commissioner

I am pleased to provide you with the Office of the Fairness Commissioner's (OFC) revised audit guidelines in this document, *Audits of Registration Practices: Guidelines for Ontario's Regulatory Bodies*.

Under the Fair Access to Regulated Professions and Compulsory Trades Act, 2006 (FARPACKTA) and the Regulated Health Professions Act, 1991 (RHPA), my office requires Ontario's regulatory bodies to review their registration practices, submit reports about them and undergo audits, to ensure that registration is transparent, objective, impartial and fair.

These guidelines apply to the compulsory trades, the regulated professions named in FARPACKTA, and the health regulatory colleges named in schedule 1 of the RHPA, collectively referred to here as "regulatory bodies" or "regulators."

The OFC has designed this document to provide guidance and aid to the Ontario regulatory bodies that must undergo an audit. It specifies the scope, standards and conditions for an audit and describes the eligibility criteria for the roster of auditors.

Following the completion of the initial round of audits of all regulatory bodies in 2010, my staff conducted extensive research and consulted with regulators, auditors and numerous fair-access experts to evaluate our approach. As a result of this comprehensive evaluation, we have redesigned our previous approach to audits in order to focus more deeply on particular concerns that have already been identified and cannot be resolved through other means.

I would like to thank the many organizations and individuals who offered valuable advice during this process. I am confident that our revised approach to audits will help us determine whether registration practices are transparent, objective, impartial and fair under circumstances that warrant deeper review.

Sincerely,

Hon. Jean Augustine, PC, CM
Fairness Commissioner



Introduction

The Fair Access to Regulated Professions and Compulsory Trades Act, 2006 (FARPACKTA) and Schedule 2 to the Regulated Health Professions Act, 1991 (RHPA), collectively known as fair-access legislation, provide the Office of the Fairness Commissioner (OFC) with several oversight tools to further its mandate to ensure fair access to Ontario's regulated professions and trades. Chief among these tools are Fair Registration Practices Reports, reviews, assessments and audits.

According to the legislation, audits are required every three years or when the Commissioner otherwise specifies. Between 2008 and 2010, the OFC required all regulatory bodies subject to the fair-access legislation to undergo an audit of their registration practices. This was the first and only time (to date) that audits have been used. The purpose of these initial baseline audits was three-fold:

- to determine compliance with fair-access legislation
- to identify registration practices in need of modification
- to identify effective registration practices that could be shared among regulators

In the spirit of continuous improvement, the OFC recognized a need to review its approach to audits. The OFC conducted extensive research and consultation with regulators, auditors, the drafters of fair-access legislation, the Ontario Internal Audit Division (OIAD) of the Treasury Board Secretariat, fair-access experts in other provinces and the OFC's own policy and program team. This exercise yielded important findings. As a result, the OFC has revised its approach to audits in order to take a more targeted approach that focuses on particular concerns that have already been identified and cannot be resolved through other means.

The OFC recognizes the importance of collaborative efforts in bringing about transparent, objective, impartial and fair registration practices. The OFC counts on regulatory bodies' cooperation when they undergo audits and on their continued efforts to achieve the goals of the legislation. Under this approach, audits provide an independent, arms-length appraisal that can benefit the OFC, regulators, and ultimately, the public. Audits therefore support the broader objectives of protecting the public interests – objectives that are shared by the OFC and regulators.

These guidelines are designed to act as a resource for regulatory bodies, based on the relevant legislative requirements. They identify the scope, standards and conditions for an audit and detail the eligibility criteria that were used in developing the roster of auditors.

Legislative basis for audits

The legislative basis for audits is found in sections 13(3)(b) and 21 of FARPACKTA and section 22.8 of Schedule 2 to the RHPA. These provisions include separate roles and responsibilities for the Commissioner and regulators. The Commissioner must give regulators at least 90 days' notice before the start of an audit.

The Commissioner is further authorized to:

- specify audit standards and the scope of audits
- specify when auditors' reports must be filed
- specify the form of reports and certificates and the information they must contain
- consult with regulatory bodies on the cost, scope and timing of audits
- establish eligibility requirements for auditors
- establish a roster of auditors
- give notice to regulators of all of the above

The fair-access legislation also stipulates that regulators must:

- appoint an auditor from the roster established by the Commissioner
- provide the auditor with the necessary information and assistance to conduct the audit
- pay the cost of the audit
- make audit reports available to the public (non-health regulators only)

Alignment with the OFC's continuous improvement strategy

Audits are an important part of the OFC's strategy for continuous improvement.

If a regulator fails to submit required information and/or unresolved and ongoing issues persist, the OFC will identify the type of recourse required based on the specific issue identified and a set of predetermined conditions. These actions may include an audit and/or one or more of the following tools:

- an Entry-to-Practice Review
- a compliance order (to non-health regulatory bodies concerning the specific duties under parts 3 and 6 of FARPACTA)
- advice to the minister responsible for the regulatory body

An audit uses a broad range of procedures to evaluate a regulator's ability to meet its legislated obligations. These procedures may include:

- physical inspection
- observation of processes
- interviews with staff and applicants
- confirmation from external parties
- examination of documents

As a result, audits may play an important role when the OFC does not have the means to get the proper evidence and to determine the cause of an issue that appears to be directly impacting applicants' ability to become registered.

Audit conditions

An audit will not be required of every regulator on a regular basis, but rather on a case-by-case basis when *all* of the following conditions are present:

1. The OFC has identified an issue with a regulator's registration practices that has left the OFC in doubt about whether the regulator is registering applicants in a way that is transparent, objective, impartial and fair. The OFC may have identified the issue in assessments or during regular monitoring of the regulator's registration practices.
2. The issue is persistent. The OFC has raised it with the regulator in writing on more than one occasion, and with the minister responsible for the regulator (with the regulator's knowledge).
3. An independent investigation is needed, because it offers a wider range of investigative techniques than the OFC has at its disposal, and because it would help the OFC determine whether the regulator is meeting its legislative obligations – and, if not, what changes need to be made.

Audit standard

The auditor will assess registration practices in order to identify and recommend solutions for correcting any deficiencies related to the regulator's meeting the legislated duty or duties that are in question. For example, if the audit concerns whether the regulator is assessing qualifications in a way that is transparent, objective, impartial and fair, the auditor would determine whether there are any weaknesses in the regulator's practices and processes that would indicate that assessments are not being administered in such a way.

The term "audit standard" is typically understood to apply to a financial auditing context. *Since this is not a financial audit, no financial standards will apply.*

The OFC is not seeking a high level of assurance regarding compliance, as is typically understood in a financial audit context. Rather, the focus will be on identifying risks to the regulator's ability to meet its legislated obligations and on opportunities to reduce those risks.

Audit scope

The scope of an audit will be **limited to the issue(s) identified by the OFC**, as the issue or issues relate to one or more of regulators' general and specific duties described in the legislation.

Sample scenario:

The OFC has become aware of the following issues with a particular regulator:

- a lack of transparency about how assessments are conducted
- the inconsistent application of assessment criteria

In this case, the scope of an audit would focus on the regulator's qualifications assessment processes and whether they are transparent, objective, impartial and fair.

Audit timelines

As stated earlier, both FARPACTA and the RHPA require audits to be conducted every three years or as otherwise directed by the Commissioner.

The OFC has considerable flexibility to choose how often a regulatory body must be audited and to specify other aspects of timing, such as the period to be covered by an audit, the time of year it must take place and the date when the report must be submitted.

Notice of audit

The OFC will aim to notify the regulator in writing that an audit is required six months before its start date. At a minimum, the OFC will give the regulator 90 days' notice.

The written notice will state the following:

- the scope of the audit and the audit standards that will apply
- the date the audit must be completed
- the responsibility of the regulatory body to:
 - appoint an auditor from the roster established by the OFC, by the date specified in the notice
 - pay all of the auditor's fees and expenses
- the condition that, if the regulatory body fails to appoint an auditor by the date specified in the notice, the OFC will choose the auditor on the regulator's behalf

A sample notice is shown at the end of this document.

Once the need for an audit is identified and the scope is determined, the OFC will advise the regulator to solicit estimates from the auditors listed on the roster, to help inform its selection.

Roster of auditors

The OFC revised the roster of auditors during the summer of 2014. The following requirements were used to determine eligibility:

- extensive experience in conducting reviews and audits of policies and procedures and their application
- knowledge of regulatory environments
- knowledge of the governance and day-to-day operations of a regulatory body
- knowledge of registration practices, including the registration of domestically and internationally trained professionals
- knowledge of what constitutes transparent, objective, impartial and fair practices
- bilingual capacity

The roster of auditors is available on the OFC's website.

Auditor orientation

Once the regulator has selected an auditor from the roster, the OFC will hold an orientation session with the auditor to discuss the scope of the audit and outline the OFC's expectations. The OFC will share the information it has gathered about the issue at hand and any additional relevant resources that may help with the audit.

The OFC will then direct the auditor to prepare an audit proposal. The OFC will review the audit proposal to ensure that the proposed work is aligned with the OFC's expectations.

Audit report

The OFC expects the audit report to cover the following elements:

- a description of the applicable regulatory standards
- a description of work performed, including the objectives, the criteria, and a rating scale (e.g., Met/Partially Met/Not Met), as determined by the auditor
- a description of findings or observations
- a conclusion about findings
- a description of risks related to the regulator's ability to meet the duties in question
- recommendations to address any identified risks

Auditors will otherwise have discretion over the form and content of the report.

After the audit

Following the completion of an audit, the regulatory body may take action or the OFC may issue a compliance order or advise the minister responsible for the regulatory body.

Sample notice of audit



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April 1, 2015

In accordance with s. 21 of the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* (FARPACTA), the Royal Society of Certified Professional Associations and Colleges of Ontario (Royal Society) is hereby notified that it must have an audit conducted of its registration practices. In particular, the Royal Society must be audited for compliance with section 10 of part III of FARPACTA as well as part II as it relates to the specified section, as a result of ongoing concerns and a lack of action to address our persistent recommendations and discussions regarding the assessment of qualifications.

The audit must cover registration practices that occurred at the Royal Society from April 1, 2014, to April 1, 2015. The audit should start no later than October 1, 2015. **The audit must be completed by December 31, 2015.**

The Royal Society must appoint an auditor from the roster established by the Fairness Commissioner. The roster consists of qualified auditors with appropriate expertise in fair-access legislation. By no later than July 2, 2015, the Royal Society must notify the Fairness Commissioner of its choice of auditor. If the Royal Society does not appoint an auditor by July 2, 2015, the Fairness Commissioner will choose the auditor and the auditor will be deemed to have been appointed by the Royal Society. As laid out in the fair-access legislation, the Royal Society is responsible for paying all of the auditor's fees and expenses.

Any questions concerning the audit should be directed to the Office of the Fairness Commissioner at 416-325-9380 or ofc@ontario.ca.

Sincerely,

Fairness Commissioner