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S.M. 2007, c. 21
Bill 19, 1st Session, 39th Legislature

The Fair Registration Practices in Regulated Professions Act

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(Assented to November 8, 2007)

WHEREAS the health, safety, and quality of life of people in Manitoba depend on services provided by a wide range of professionals;

AND WHEREAS regulated professions are responsible for protecting the public interest by ensuring a high standard of professional practice;

AND WHEREAS the registration practices of regulated professions should be clear and well-defined and ensure that all applicants receive fair consideration;

AND WHEREAS Manitoba is committed to an informed, fair and systematic approach to improving professional recognition processes for skilled individuals educated outside Canada;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1

INTRODUCTORY PROVISIONS

Purpose of this Act

1 The purpose of this Act is to help ensure that regulated professions and individuals applying for registration by regulated professions are governed by registration practices that are transparent, objective, impartial and fair.

Definitions

2 The following definitions apply in this Act.

"fairness commissioner" means the fair registration practices commissioner appointed under section 11. (« commissaire à l'équité »)

"internal review or appeal" means a rehearing, reconsideration, review or appeal, or another process provided by a regulated profession in respect of a registration decision, regardless of the terminology used by the regulated profession. (« réexamen ou appel interne »)

"internal review or appeal decision" means a decision in an internal review or appeal. (« décision faisant suite à un réexamen ou à un appel interne »)

"internationally educated individual" means an individual who has been educated in a country other than Canada to practise a regulated profession and who has applied for, or who intends to apply for, registration by that regulated profession in Manitoba. (« particulier instruit à l'étranger »)

"minister" means the minister appointed by the Lieutenant Governor in Council to administer this Act. (« ministre »)

"person" includes an unincorporated association. (« personne »)

"registration" means the granting of membership, with or without conditions, in a regulated profession, whether by registration, licensure, admission, certification, enrolment or other means, regardless of the terminology used by the regulated profession. (« inscription »)

"registration decision" means, regardless of the terminology used by a regulated profession, a decision

(a) to grant registration to an applicant;

(b) to not grant registration to an applicant; or

(c) to grant registration to an applicant subject to conditions. (« décision en matière d'inscription »)

"regulated profession" means the body corporate or association that is responsible for the governance of a profession named in the Schedule to this Act. (« profession réglementée »)

Fair Registration Practices Code

3 The registration practices set out in Part 2 are to be known as the Fair Registration Practices Code.

PART 2**FAIR REGISTRATION PRACTICES CODE****GENERAL DUTY****General duty**

4 A regulated profession has a duty to provide registration practices that are transparent, objective, impartial and fair.

SPECIFIC DUTIES**Duty to provide information**

5 A regulated profession must provide the following information, in a clear and understandable form, to individuals applying or intending to apply for registration by the regulated profession:

- (a) information about its registration practices and internal review or appeal processes;
- (b) information about the amount of time that the registration process usually takes;
- (c) objective requirements for registration by the regulated profession, including a description of the criteria used to assess whether the requirements have been met, together with a statement of which requirements can be satisfied through alternatives that are acceptable to the regulated profession;
- (d) information about any support the regulated profession provides to applicants during the registration process, or other available supports of which the regulated profession is aware;
- (e) a fee scale related to registrations.

Timely decisions, responses and reasons

6 A regulated profession must

- (a) make registration decisions within a reasonable time;
- (b) provide written responses to applicants within a reasonable time; and
- (c) provide written reasons to applicants within a reasonable time in respect of all
 - (i) registration decisions refusing to grant registration, or granting registration subject to conditions, and
 - (ii) internal review or appeal decisions,

including, where practical, information respecting measures or programs that may be available to assist unsuccessful applicants in obtaining registration at a later date.

Internal review or appeal

7(1) A regulated profession must provide an internal review of, or appeal from, its registration decisions within a reasonable time.

Submissions by applicant

7(2) A regulated profession must provide an applicant for registration with an opportunity to make submissions respecting any internal review or appeal.

How to make submissions

7(3) A regulated profession may specify whether submissions respecting an internal review or appeal are to be submitted orally, in writing or by electronic means.

Information on appeal rights

7(4) A regulated profession must inform an applicant of any rights that he or she may have to request a review of, or appeal from, the decision, and provide information about the procedures and time frames of a review or appeal.

Decision-maker

7(5) No one who acted as a decision-maker in respect of a registration decision may act as a decision-maker in an internal review or appeal in respect of that registration decision.

Documentation of qualifications

8(1) A regulated profession must make information publicly available as to what documentation of qualifications must accompany an application and what alternatives to the documentation may be acceptable to the regulated profession if an applicant cannot obtain the required documentation for reasons beyond his or her control.

Assessing qualifications

8(2) If a regulated profession makes its own assessment of qualifications, it must do so in a way that is transparent, objective, impartial and fair.

Reliance on third party to assess

8(3) If a regulated profession relies on a third party to assess qualifications, it must take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair.

Training

9 A regulated profession must ensure that individuals assessing qualifications and making registration decisions or internal review or appeal decisions have received training that includes, where appropriate,

- (a) training in how to hold hearings; and
- (b) training in any special considerations that may apply in the assessment of applications and the process for applying those considerations.

Access to records

10(1) Upon the written request of an applicant for registration by a regulated profession, the regulated profession must provide the applicant with access to any record relating to the application that is in its custody or under its control.

Exceptions

10(2) Despite subsection (1), a regulated profession may refuse access to information in a record in any of the following circumstances:

- (a) information in the record is subject to a legal privilege that restricts disclosure;
- (b) another Act or regulation, an Act or regulation of Canada or an order of a court or quasi-judicial tribunal prohibits disclosure of the information in the record in the circumstances;
- (c) granting the access could reasonably be expected to lead to the identification of a person who provided information in the record to the regulated profession explicitly or implicitly in confidence, and the regulated profession considers it appropriate in the circumstances that the identity of the person be kept confidential;
- (d) granting the access could reasonably be expected to threaten or harm the mental or physical health or the safety of another person;
- (e) granting the access could negatively affect public safety or could undermine the integrity of the registration process.

Severability

10(3) Despite subsection (2), an applicant has a right of access to information in a record if it can reasonably be severed from information to which the applicant does not have a right of access by reason of that subsection.

Process to be established

10(4) A regulated profession must establish a process under which requests for access to records will be considered.

Fee for access

10(5) A regulated profession may charge the applicant a fee for making records available if it first gives the applicant an estimate of the fee.

Amount of fee

10(6) The amount of the fee must not exceed the amount prescribed by the regulations or, if no amount is prescribed, the amount of reasonable cost recovery.

Waiver of fee

10(7) A regulated profession may waive the payment of all or any part of the fee that an applicant is required to pay under subsection (5) if, in its opinion, it is fair and equitable to do so.

PART 3

FAIR REGISTRATION PRACTICES COMMISSIONER

Appointment of fairness commissioner

11 The Lieutenant Governor in Council must appoint a fair registration practices commissioner.

Responsibilities of fairness commissioner

12(1) The fairness commissioner has the following responsibilities:

(a) to give information and advice to regulated professions to help them understand the requirements of this Act;

(b) to review the registration practices of regulated professions — including their use of third parties to assess qualifications of applicants — for the purpose of determining compliance with the requirements of this Act, and to make recommendations to regulated professions about how to improve compliance;

(c) to advise regulated professions, government agencies, community organizations, post-secondary educational institutions, third parties relied on by regulated professions to assess qualifications, and others as the minister may direct, about matters under this Act and the regulations;

(d) to advise government departments about matters under this Act and the regulations that affect a department or a regulated profession for which the minister of that department is responsible;

(e) to report to the minister on registration practices related to internationally educated individuals and their registration by regulated professions, and to report to other ministers in respect of those same issues as they relate to regulated professions for which those ministers are responsible;

(f) to advise the minister on matters related to the administration of this Act;

(g) to perform any other functions provided for in the regulations.

Cooperation

12(2) A regulated profession must cooperate with the fairness commissioner in the conduct of a review referred to in clause (1)(b).

Limit on powers

12(3) The fairness commissioner may not become involved in a registration decision or an internal review or appeal decision on behalf of an applicant or potential applicant for registration.

Commissioner's report

13(1) Every two years the fairness commissioner must prepare and submit to the minister a report on the implementation and effectiveness of this Act and the regulations in helping to ensure that the registration practices of regulated professions are transparent, objective, impartial and fair.

Contents

13(2) The report may include recommendations for improving the effectiveness of this or any other Act and regulations under this or any other Act.

Tabling report in Assembly

13(3) The minister must table a copy of the report in the Assembly within 15 days after receiving it if the Assembly is sitting or, if it is not, within 15 days after the next sitting begins.

Special report

13(4) In the public interest, the fairness commissioner may publish a special report about any matter within the scope of the fairness commissioner's responsibilities under this Act.

PART 4

GENERAL PROVISIONS

MINISTER'S RESPONSIBILITIES

Minister's responsibilities

14 The minister has the following responsibilities:

- (a) to provide information and assistance to internationally educated individuals, and others who are applicants or potential applicants for registration by a regulated profession, respecting the requirements for registration and the procedures for applying;
- (b) to conduct research, analyze trends and identify issues related to the purpose of this Act and the registration of internationally educated individuals and others by regulated professions;
- (c) to provide information and assistance respecting fair registration practices and related matters to
 - (i) regulated professions,
 - (ii) organizations that deal with internationally educated individuals, including community organizations, post-secondary educational institutions, trade or occupational organizations and employers, and
 - (iii) government departments and government agencies that deal with internationally educated individuals.

REVIEW OF REGISTRATION PRACTICES

Review of registration practices

15(1) In accordance with the regulations, every regulated profession must undertake a review of its registration practices at times specified by the fairness commissioner to ensure that they comply with the Fair Registration Practices Code, and must file a report on the results with the fairness commissioner by the dates specified by the fairness commissioner.

Content of review

15(2) The review must also include

- (a) an analysis of the extent to which the requirements for registration are necessary for, or relevant to, the practice of the profession;
- (b) an analysis of the efficiency and timeliness of decision-making;
- (c) an analysis of the reasonableness of the fees charged by the regulated profession in respect of registrations;
- (d) a report on the registration of internationally educated individuals; and
- (e) any other matter specified in the regulations.

Combined report

15(3) A regulated profession may combine a report under this section with any other report of the regulated profession as the fairness commissioner may permit.

REGULATIONS

Regulations

16(1) The Lieutenant Governor in Council may make regulations

- (a) amending the Schedule by naming professions as regulated professions or removing any regulated profession from the Schedule;
- (b) respecting reports, records and other information that regulated professions must provide to the fairness commissioner or the minister, including, but not limited to, their form, their manner of preparation and making them available to the public;
- (c) for the purpose of clause 15(2)(e), specifying further matters that regulated professions must review and report on to the fairness commissioner;
- (d) requiring regulated professions to conduct, or permit the conduct of, audits of their registration practices, including specifying audit standards, the scope of audits, the persons or classes of persons authorized to conduct audits, and reporting requirements for audits;
- (e) respecting the responsibilities of the fairness commissioner;

(f) respecting any transitional matters necessary for the effective implementation of this Act and the regulations, including temporarily exempting a regulated profession from a provision of this Act or the regulations;

(g) respecting any matter the Lieutenant Governor in Council considers necessary or advisable for the administration of this Act.

Consultation

16(2) Before a regulation is made under subsection (1), the minister must consult with affected regulated professions and interested persons.

Classes

16(3) A regulation may create classes of regulated professions and provide differently for different classes. A class may be defined as consisting of one or more regulated professions.

OFFENCE

Offence

17(1) A person is guilty of an offence who

(a) fails to file a report required under subsection 15(1) or the regulations; or

(b) knowingly provides false or misleading information in a report or other record filed with the fairness commissioner or the minister under this Act, or otherwise knowingly provides false or misleading information to the fairness commissioner or the minister or to a person acting on behalf of either of them.

Penalty

17(2) A person who is guilty of an offence under this Act is liable on summary conviction to a fine of not more than \$25,000.

MISCELLANEOUS PROVISIONS

Immunity

18(1) No proceeding may be commenced against the fairness commissioner or anyone acting under the authority of this Act for any act done or omitted in good faith in the execution or intended execution of his or her duties under this Act.

Testimony

18(2) Neither the fairness commissioner nor anyone acting under the authority of this Act is a competent or compellable witness in a civil proceeding outside this Act in connection with anything done under this Act.

Avoiding disclosure of personal information

19 A person who submits a report or other document for the purposes of this Act or the regulations must take every reasonable precaution to avoid disclosing personal information, as defined in *The Freedom of Information and Protection of Privacy Act*, in the report or document.

Confidentiality of information

20 A person is not guilty of an offence concerning the confidentiality or secrecy of information under any other enactment by reason of complying with a request or requirement to provide information to the fairness commissioner under this Act or the regulations.

Conflict with other Acts and regulations

21 If a provision of this Act or a regulation made under this Act conflicts with a provision of another Act or a regulation made under another Act, the provision of this Act or the regulation under this Act prevails to the extent of the conflict.

Two-year review re fair practices for teachers, trades, etc.

22(1) Within two years after this section comes into force, the minister must review the criteria and processes used

(a) to certify teachers under *The Education Administration Act*;

(b) to certify persons under *The Apprenticeship and Trades Qualifications Act*; and

(c) to certify or register persons under any other Act, when the minister considers a review to be desirable;

and consider whether any changes should be made respecting fair certification and registration practices, including legislative changes.

Report

22(2) The minister must prepare a report on the review and make it available to the public.

C.C.S.M. reference

23 This Act may be referred to as chapter F12 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force

24 This Act comes into force on a day to be fixed by proclamation.

SCHEDULE

REGULATED PROFESSIONS

The following are named as regulated professions to which this Act applies:

Health Professions

1. College of Dietitians of Manitoba
2. College of Licensed Practical Nurses of Manitoba
3. College of Medical Laboratory Technologists of Manitoba
4. College of Midwives of Manitoba
5. College of Occupational Therapists of Manitoba
6. The College of Physicians and Surgeons of Manitoba
7. College of Physiotherapists of Manitoba
8. College of Podiatrists of Manitoba
9. College of Registered Nurses of Manitoba
10. College of Registered Psychiatric Nurses of Manitoba
11. The Denturists Association
12. Manitoba Association of Optometrists
13. The Manitoba Association of Registered Respiratory Therapists
14. The Manitoba Chiropractors Association
15. The Manitoba Dental Association
16. The Manitoba Naturopathic Association
17. The Manitoba Pharmaceutical Association
18. The Manitoba Speech and Hearing Association
19. The Opticians of Manitoba
20. The Psychological Association of Manitoba

Other Professions

1. Association of Manitoba Land Surveyors
2. Association of Professional Engineers and Geoscientists of the Province of Manitoba
3. The Certified General Accountants Association of Manitoba
4. Certified Technicians and Technologists Association of Manitoba Inc.
5. The Institute of Chartered Accountants of Manitoba
6. The Law Society of Manitoba
7. The Manitoba Association of Architects
8. Manitoba Institute of Agrologists
9. Manitoba Veterinary Medical Association

10. The Society of Management Accountants of Manitoba

nbsp;The Psychological Association of Manitoba

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6. The Law Society of Manitoba
7. The Manitoba Association of Architects
8. Manitoba Institute of Agrologists
9. Manitoba Veterinary Medical Association
10. The Society of Management Accountants of Manitoba