

100 Registration Cases Over Three Years Part 2: Education and Examination Requirements

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The Health Professions Appeal and Review Board (HPARB) renders a lot of decisions. Many, of course, have similar issues and reviewing them can become repetitive. Few people have the luxury of reading all of the decisions. As an experiment, we reviewed 100 recent registration decisions of HPARB decided over the past three years. Our goal was to see if we could identify principles and concepts underlying HPARB's approach to recurring registration issues, especially those that might be different from approaches taken in the past.

The following summarizes our analysis, which may be instructive both to regulators appearing before HPARB and regulators who deal with registration issues scrutinized by other tribunals and the courts. This is the second of a four-part series.

Educational Equivalency

Many regulators recognize specific programs, or accredited programs, and then accept graduates of programs that are substantially equivalent. HPARB seems open to various approaches for assessing substantial equivalency including:

- Course hours comparisons: *O.V. v College of Psychologists of Ontario*, 2020 CanLII 51677 (ON HPARB), <https://canlii.ca/t/j8zsv>; *M.R. v College of Psychologists of Ontario*, 2019 CanLII 27793 (ON HPARB), <https://canlii.ca/t/hzm7f> (however, to be substantially equivalent, course hours do not necessarily have to be mathematically equivalent); *D. E. S. v College of Registered Psychotherapists and Registered Mental*

Health Therapists of Ontario, 2020 CanLII 10757 (ON HPARB), <https://canlii.ca/t/j57cs> (the comparison should not be a mathematical exercise);

- Mapping core competencies achieved through various courses: *C.F. v College of Registered Psychotherapists*, 2019 CanLII 115465 (ON HPARB), <https://canlii.ca/t/j3scb>; *Firka v College of Registered Psychotherapists*, 2021 CanLII 36971 (ON HPARB), <https://canlii.ca/t/jfqj8>;
- Successful completion of a Prior Learning Assessment and Recognition (PLAR) process: *B.W.P. v College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario*, 2020 CanLII 31824 (ON HPARB), <https://canlii.ca/t/j6x0v>; and
- Comparison of the academic level and accreditation of the educational institution: *R.S.M. v College of Psychologists of Ontario*, 2019 CanLII 92280 (ON HPARB), <https://canlii.ca/t/j2pkx>.

While HPARB will look at the cumulative educational achievements of an applicant, there must be some level of cohesion, structure and evaluation to constitute substantial equivalency to a single, comprehensive program: *Sloss v College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario*, 2021 CanLII 88746 (ON HPARB), <https://canlii.ca/t/jj5vt>. Workshops and other additional educational experiences typically do not have the breadth, scope and academic rigor to constitute substantial equivalency: *E.H. v College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario*, 2019 CanLII 85405 (ON HPARB), <https://canlii.ca/t/j2dnm>.

However, HPARB is not opposed to reaching a different conclusion than that reached by the regulator: *E.M. v Ontario (College of Registered Kinesiologists)*, 2019 CanLII 75371 (ON HPARB), <https://canlii.ca/t/j1zb9> (two inadequate educational

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programs can be combined into one substantially equivalent program).

Clinical experience is generally not considered to be a substitute for an educational requirement. The two are substantively different: *Andrews v College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario*, 2021 CanLII 120892 (ON HPARB), <https://canlii.ca/t/jkw15>.

Examination Requirements

HPARB has generally upheld the value of examinations as a registration requirement. They provide objective, external, and verifiable evidence of sufficient knowledge, skill and judgment to practise the profession. *A.H-A.O. v Ontario (College of Physicians and Surgeons)*, 2019 CanLII 50927 (ON HPARB), <https://canlii.ca/t/j0tm9>.

Examination Attempts

A frequent issue is whether an applicant should be permitted to have more than the usual maximum number of attempts of a required examination. 15% of the 100 cases related to requests to permit another examination attempt.

HPARB has upheld the principle that there can be a specified maximum number of attempts and that an annulment of a previous attempt should be made only in exceptional circumstances: *Charkhandeh v Ontario (College of Psychologists)*, 2021 CanLII 38507 (ON HPARB), <https://canlii.ca/t/jft3p>. Only two of the fifteen cases (13%) resulted in an annulment of an examination attempt.

There is a concern that after repeated attempts at an examination, passing it may reflect knowledge (i.e., memorization) of the examination rather than the applicant truly possessing the required competencies: *Ciurleo v Ontario (College of Chiropractors)*, 2021 CanLII 85583 (ON HPARB), <https://canlii.ca/t/jhsrq>.

In considering whether an examination attempt should be annulled, HPARB considers whether the applicant chose to proceed with an examination attempt despite knowing in advance of a troubling circumstance, such as the death of a family member: *College of Nurses of Ontario v M. D.*, 2020 CanLII 7785 (ON HPARB), <https://canlii.ca/t/j524l>; *N.D. v College of Nurses of Ontario*, 2019 CanLII 114725 (ON HPARB), <https://canlii.ca/t/j3rb5> (family circumstances should have been raised in advance, illness on examination date should have been disclosed then and not after unsuccessful results were conveyed); *College of Nurses of Ontario v D. C.*, 2020 CanLII 7786 (ON HPARB), <https://canlii.ca/t/j5248>; *S.R. v College of Nurses of Ontario*, 2019 CanLII 18859 (ON HPARB), <https://canlii.ca/t/hz13v>; *L.O.G. v College of Nurses of Ontario*, 2019 CanLII 73247 (ON HPARB), <https://canlii.ca/t/j1vd6> (personal circumstances raised for the first time before HPARB).

HPARB also said:

The Board finds that it is the responsibility of each applicant to assess his or her own ability to write the examination and to decide whether and when to attempt the examination. (*A.O. v College of Nurses of Ontario*, 2020 CanLII 98018 (ON HPARB), <https://canlii.ca/t/jc311>).

Where the applicant has anxiety concerns, the proper course is to request an accommodation and not to seek an annulment of the attempt afterwards: *E. B. v College of Nurses of Ontario*, 2020 CanLII 24532 (ON HPARB), <https://canlii.ca/t/j63rx>.

However, where the circumstances may have affected the applicant's ability to assess whether they were able to attempt the examination, an attempt of the examination might be annulled even though the applicant chose to proceed with it:

Grey Areas

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

The Board recognizes that applicants facing an examination are responsible for assessing their own personal circumstances to determine whether to attempt the examination and when to do so. However, there can be extraordinary circumstances that override an applicant's ability to make such an assessment. The Applicant's further explanation of her circumstances when she attempted the examination the first time, when considered alongside the totality of the information that was already available to the Committee, suggest that the Applicant was compromised in her ability to make a decision to proceed and to effectively write the examination. (*A.T. v College of Nurses of Ontario*, 2019 CanLII 73283 (ON HPARB), <https://canlii.ca/t/j1vdg>.)

An example of where an examination attempt might be annulled is where there were administrative issues such as excessive noise, which can be compounded if the applicant has an anxiety disorder, especially if the concern is raised before the examination results are received. This would be an example of a circumstance that could not have been predicted. See: *M. K. P. v College of Nurses of Ontario*, 2020 CanLII 101091 (ON HPARB), <https://canlii.ca/t/jc6v5>.

However, examination administrative issues, such as computer problems, must be supported by sufficient evidence to meet the onus of proof (*A.B. v College of Nurses of Ontario*, 2019 CanLII 15547 (ON HPARB), <https://canlii.ca/t/hxv20>) and be such as to have affected the outcome of the examination to be considered: *C.G.D. v College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario*, 2020 CanLII 39017 (ON HPARB), <https://canlii.ca/t/j85tm>.

Some examination provisions require the applicant to attempt the examination at the earliest available opportunity. HPARB treats such requirements seriously and while exceptional circumstances will

sometimes be entertained, workload and stress will not generally constitute an exceptional circumstance: *Mahboob v College of Physicians and Surgeons of Ontario*, 2021 CanLII 5500 (ON HPARB), <https://canlii.ca/t/jcwkj>.

In the next issue of Grey Areas we will examine how HPARB approaches various policy issues related to registration.