DECISION NO.  2013-HPA-002(a)

In the matter of an application for review under section 50.54 of the Health Professions Act, R.S.B.C. 1996, c. 183, as amended, (the “Act”) of a Registration decision

BETWEEN: The Applicant APPLICANT
AND: The College of Traditional Chinese Medicine Practitioners and Acupuncturists COLLEGE
BEFORE: J. Thomas English, Q.C., Panel Chair REVIEW BOARD

DATE: Conducted by way of written hearing concluding on July 30, 2013

APPEARING: For the Applicant: J. Alexander Dutton, Counsel
For the College: Angela R. Westmacott, Counsel

I  DECISION

[1] For the reasons that follow I confirm the Decision of the Registration Committee refusing a grant of registration to the Applicant.

II  INTRODUCTION

[2] The Applicant made application for membership in the College. The Registration Committee of the College decided that the Applicant had not satisfied the requirement for successful completion of not less than two years of liberal arts or sciences study in an accredited college or chartered/approved university acceptable to the Registration Committee (the “Decision”).

III  BACKGROUND FACTS

[3] Section 48 (1)(a.1) of the bylaws of the College provides that for full registration an applicant must have, among other requirements:

…successful completion of not less than two (2) years of liberal arts or sciences study (comprised of at least 60 credits) in an accredited college or chartered/approved university acceptable to the registration committee.
At the X Institute (the “Institute”) in Ontario the Applicant received the following 63 credits for courses completed:

- Word Processing BLOCK: 51 credits
- Young Women in Modern Lit: 3 credits
- Business Math: 3 credits
- Political Science: 3 credits
- Psychology – Intro: 3 credits

I have reviewed the Institute’s official transcript in relation to the Applicant. The Word Processing Block of 51 credits were earned in courses such as keyboarding and formatting, computer concepts, word processing, work placement, office systems and other similar courses.

In order to obtain a Bachelor of General Studies at a university in British Columbia (“University A”), the Applicant applied to have her credits at the Institute recognized by University A. After assessing her education at the Institute, University A granted the Applicant 63 credits toward a Bachelor of General Studies.

Three other traditional Chinese medicine institutions based in part on the credits recognized by University A also recognized that the Applicant had 60 credits in liberal arts and science studies.

**IV RELEVANT REGULATORY AND LEGISLATIVE PROVISIONS**

The following provisions of the Act are relevant:

16 (1) It is the duty if the college at all times
(a) to serve and protect the public, and
(b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.

(2) A college has the following objects:
    
    (c) to establish the conditions or requirements for registration of a person as a member of the college;

    (i.1) to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair;

A board may make bylaws, consistent with the duties and objects of a college under section 16, that it considers necessary or advisable, including bylaws to do the following:
(m) establish conditions or requirements for the registration of a person as a member of the college, including the following:

(i) standards of academic or technical achievement;

(ii) competencies or other qualifications;

(iii) requirements for providing evidence of good character;

(m.4) confer discretion on the registration committee, in satisfying itself under section 20 that a person meets the conditions or requirements for registration as a member of the college, to consider whether the person’s knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications established under paragraph (m), and to grant registration on that basis;

20 (1) The registration committee is responsible for granting registration, including reinstatement of registration, of a person as a member of its college.

(2) The registration committee must grant registration as a member of its college to every person who, in accordance with the bylaws,

(a) applies to the college for registration,

(b) satisfies the registration committee that he or she meets the conditions or requirements for registration in a class of registrants, and

(c) pays the required fees, if any.

50.54 (1) In this section, “applicant” means

(a) a person applying for registration as a member of a college who is refused a grant of registration under section 20, except for a refusal under section 20 (2.1) or (3),

(b) a registrant who is granted registration in a class of registrants under section 20 (2) with limits or conditions on the practice of the designated health profession by the registrant, except limits or conditions under section 20 (2.1) or (3), or

(c) a person applying for certification as a certified non-registrant who is refused certification.

(2) An applicant may apply to the review board for a review of a registration decision.

(3) An application under subsection (2) must be made within 30 days of the day on which written notice of the registration decision is delivered to the applicant.
(4) An applicant applying for review under subsection (2) must, within the time period set out in subsection (3), deliver a copy of the application to the college.

(5) Only the applicant and the college may be parties to a review under this section.

(6) On receipt of an application under subsection (2), the review board must conduct a review of the registration decision.

(7) A review under this section is a review on the record.

(8) The review board may hear evidence that is not part of the record as reasonably required by the review board for a full and fair disclosure of all matters related to the issues under review.

(9) On completion of its review under this section, the review board may make an order

(a) confirming the registration decision,

(b) directing the registration committee to make a decision that could have been made by the registration committee in the matter, or

(c) sending the matter back to the registration committee for reconsideration with directions.

(10) The review board may make an order under subsection (9) directing the registration committee to grant registration with or without limits or conditions, or certification, as the case may be, only if the review board is satisfied that

(a) all of the following apply:

(i) the registration committee failed to act fairly in considering the application for registration or certification;

(ii) the registration decision

(A) was made arbitrarily or in bad faith,

(B) was made for an improper purpose,

(C) was based entirely or predominantly on irrelevant factors, or

(D) failed to take requirements under this Act into account;

(iii) the conditions described in subsection (11) (a) or (b) are met, or

(b) the person is a person to whom the registration committee is obliged under the Labour Mobility Act to grant registration or certification.

(11) The following conditions apply for the purposes of subsection (10) (a)

(iii):

(a) in the case of a person applying for registration as a member of the college,

(i) the person’s knowledge, skills and abilities must be substantially equivalent to the standards of academic or technical achievement
and the other competencies or other qualifications required for registration in a class of registrants, and

(ii) the applicant must meet any other conditions or requirements for registration in the class of registrants;

V  RELEVANT COLLEGE REGISTRATION PROVISIONS

[9] The following provisions of the bylaws of the College are relevant:

46  For the purposes of part IV of these bylaws

“education means any course of study, containing both clinical and theoretical components, based on a single program or integrated curriculum, containing content necessary for entry level acupuncture and traditional Chinese herbology and traditional Chinese medicine practice.”

. . .

48  (1) For the purposes of section 19(2) of the Act, the requirements for full registration are

. . .

(a.1) successful completion of not less than two (2) years of liberal arts or sciences study (comprised of at least 60 credits) in an accredited college or chartered/approved university acceptable to the registration committee.

. . .

(4) Despite subsection (1)(a) and (a.1), the registration committee has discretion, in satisfying itself under section 20 of the Act that the applicant meets the conditions or requirements for registration as a member of the College, to consider whether the applicant’s knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications established in subsection 1(a) and (a.1), and to grant registration on that basis provided the applicant

(a) provides evidence satisfactory to the registration committee, of such knowledge, skills and abilities, and

(b) meets the requirements established in subsection (1)(c) and (d) and 2(a), (b), (d).

VI  ADDITIONAL EVIDENCE

[10] Section 50.54(8) permits the Board to hear evidence that was not part of the record if reasonably required for a full and fair disclosure of all matters related to the issues under review.
[11] Several of the exhibits to the affidavit of the Applicant were not part of the record before the College but are relevant to the submissions of Counsel for the Applicant. Similarly, the College seeks to have me consider the following email from the Senior Director of University A:

With respect to [the Applicant’s] program evaluation file into the Bachelor of General Studies, I can confirm that at the time of assessment [the Applicant] was awarded 48 applied credits and another 15 academic credits. Of the 15 academic credits (5 courses), 12 credits (4 courses) were deemed to be from Liberal Arts. The remaining applied and academic credits were not deemed to be from either Science or Liberal Arts courses.

[12] In my view all the evidence referred to in paragraph [11] is reasonably required to be before me and I admit it all.

VII ISSUE AND SUBMISSIONS

[13] The primary issue to be decided in this matter is the appropriate interpretation of bylaw 48(1)(a.1) of the College bylaws. I repeat the bylaw:

Successful completion of not less than two (2) years of liberal arts or sciences study (comprised of at least 60 credits) in an accredited college or chartered/approved university acceptable to the registration committee.

[14] Counsel for the Applicant submits that the word “acceptable” modifies “an accredited college or chartered/approved university”. As University A is an approved university which recognized 63 credits in favour of the Applicant, the Registrant Committee should similarly recognize those credits and as a result the Applicant has satisfied bylaw 48(1)(a.1).

[15] In the alternative, Counsel for the Applicant submits that given the background and experience of the Applicant bylaw 48(4) is applicable in that, “the applicant’s knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications established in subsection 1(a) and (a.1) and to grant registration on that basis…”

[16] Counsel for the College submits that the Registration Committee’s view is that 51 credits of word processing block does not qualify as “liberal arts or sciences study”, and that the interpretation of the College ought to prevail unless such interpretation represents an unreasonable decision, i.e., it is not within a range of possible feasible alternative interpretations.

VIII ANALYSIS

A. Bylaw 48(1)(a.1)

[17] The submission of the Applicant that “acceptable” should be read as referring to a university given the sequencing of the words is certainly a feasible argument. However, when one examines what was the purpose of 48(1)(a.1) it must surely have been that the College wanted all of its registrants to have had a background education
consisting of at least two years of liberal arts and sciences study exposure. If that is the case then the Applicant does not have the liberal arts and science background based on the recognition by University A of the credits derived from the Institute as is made plain by the email from the Senior Director of University A quoted in paragraph [11].

[18] It should also be noted that the liberal arts and sciences studies were not completed at an approved university, i.e. University A, but rather at the Institute which I infer is not "an accredited college or chartered / approved university", recognized by the College. For that reason I consider the Registration Committee’s view as expressed by College counsel in paragraph 16 above to be reasonable and supported by both the law and the evidence in this matter.

B. Bylaw 48 (4)

[19] In the alternative, counsel for the Applicant submits that the Registration Committee should exercise its discretion under bylaw 48(4) and determine that the Applicant has the substantially equivalent knowledge, skills and abilities as a person who has satisfied bylaw 48(1)(a.1).

[20] In her statement of points and her accompanying affidavit the Applicant has fully indicated her background and life experiences. Nonetheless, the Registration Committee was not prepared to exercise its discretion in favour of the Applicant. As there is no evidence of bad faith on behalf of the College I am not prepared to vary their decision on that issue.

IX CONCLUSION

[21] I have considered all of the information and submissions before me whether or not I have specifically referenced them herein.

[22] I confirm the decision of the Registration Committee refusing a grant of registration to the Applicant.

“J. Thomas English”

J. Thomas English Q.C., Chair
Health Professions Review Board

August 14, 2013