The Applicant has filed an Application for Review of a decision made by the Registration Committee of the College on November 23, 2017 (the “2017 Decision”). In that decision, the Registration Committee determined that:

(a) the Committee had evidence that the Applicant does not satisfactorily meet the College’s competence requirements and is no longer eligible for provisional registration;

(b) the Applicant’s provisional registration granted September 30, 2014, will expire on the last day of the month after the review of his application;

(c) the Applicant’s provisional registration will expire on November 30, 2017; and

(d) to be eligible for practicing RN registration, the Applicant must complete certain transitional education courses.

For the purposes of this decision, the Registration Committee of the College will be referenced as the Registration Committee or the Committee.
On February 13, 2018, counsel for the College provided the Review Board with the record of the Applicant’s history of registration and licensure with the College (the “Record”).

On February 16, 2018, the Chair of the Review Board wrote to the Parties and directed this matter to Stage 1 of the Review Board’s hearing process and explained that, at this stage, the Applicant is asked to submit a written Statement of Points outlining all his submissions and identifying any additional documents he wishes the Review Board to consider on the review. The College is not asked for submissions at this stage.

On March 19, 2018, the Applicant filed his Statement of Points; he provided further submissions on April 3, 2018.

The Chair assigned the Stage 1 hearing of this matter to me on March 21, 2018, and on March 26, 2018, I determined that I could not properly decide the matter based only on the Record and the Applicant’s submissions and I wrote the Parties and directed the matter to stage 2 so that I could receive submissions from the College and consider any further submissions from the Applicant; I asked the Parties to address certain issues in their submissions.

On April 26, 2018, I granted the College’s request for an extension of time in which to file its submissions and I afforded the Applicant a similar extension.

The College provided its submissions on May 11, 2018.

The Applicant opted not to reply to the College’s submissions.

My task, on behalf of the Review Board is to review the 2017 Decision in the context of the Record and the submissions from the Parties

II THE APPLICANT’S HISTORY OF REGISTRATION AND LICENSURE

The Applicant provided some information regarding his history of registration and licensure with the College in his Application for Review, but that history was not complete. After reviewing the Record and the submissions of the College, I now have a more fulsome history which I have summarized below.

The Applicant is an internationally-educated nurse. He received his BSN in India in 2007 and was, subsequently registered and practised in India from 2007-2009. The Applicant moved to Ireland and was registered as a nurse in 2010 and practised nursing there from 2011-2014. He first applied to be registered in Canada with the College of Registered Nurses of Nova Scotia (the “CRNNS”) in 2010. The CRNNS determined that he was eligible to write the Canadian Registered Nurse Examination. The Applicant was successful at the exam on October 2, 2013, on his fourth attempt and was granted registration by the CRNNS. The Applicant did not practice nursing in Nova Scotia at any time after his registration and is no longer registered in that jurisdiction.

On April 7, 2014, the Applicant submitted a Canadian application for registration with the College. College staff assessed the application and in June requested that the
Applicant provide additional information on how English fluency was demonstrated and if any competency assessment was undertaken to gain RN registration in Nova Scotia. The Applicant provided a certified copy of his English fluency testing by the International English Language Testing System (“IELTS”) in 2009. The Applicant did not have his nursing competency assessed prior to being registered by the CRNNS. As a result, the College advised the Applicant that his application would need to be put before the Registration Committee.

**The 2014 Decision**

On September 30, 2014, the Registration Committee met and considered the Applicant’s application for registration as an applicant registered in another Canadian jurisdiction (Nova Scotia) that does not have congruent requirements to the College for demonstrating that an applicant has substantially equivalent competence to that of a nurse trained in Canada. The Committee noted that the Applicant had not practised clinically in Nova Scotia or any other Canadian jurisdiction and had not completed a “substantially equivalent competency” (“SEC”) assessment but had worked as a nurse in India and Ireland. The Committee decided that the Applicant was eligible for provisional registration subject to certain conditions (the “2014 Registration Committee Decision”). Those conditions were:

(a) Applicant must provide evidence satisfactory to the Registration Committee of employer support, including confirmation by the employer that the employer is aware of the limits and conditions placed on the applicant’s registration.

(b) Applicant must provide an employment reference after 250 hours of practice.

(c) Within six months of the granting of provisional registration, the applicant must complete a Competency and Enhancement for Nurses (“CAEN”) Program or other competency-based assessment satisfactory to the Registration Committee.

(d) Following completion of the assessment in paragraph (c), the Registration Committee will review the results of the assessment, to consider, based on the assessment results and any additional information provided by the applicant: (i) whether the applicant may be granted practicing RN registration; or (ii) whether or not to extend the applicant’s period of eligibility for provisional registration.

(e) Until the applicant satisfies paragraph (c) and the Registration Committee review the results of the assessment, the applicant’s practice must be monitored, which must include 1:1 on-site supervision by one or more RNs or NPs\(^2\) approved by CRNBC.

(f) If the Registration Committee extends the applicant’s period of eligibility for provisional registration under paragraph (d): (i) the applicant must complete any additional training, experience, examinations or assessment requirements considered necessary by the Registration Committee; and (ii) the applicant’s practice will continue to be subject to any limits or conditions

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\(^2\) I understand “NP” to be an abbreviation for the designation, “Nurse Practitioner.”
imposed by the Registration Committee for the remaining duration of the provisional registration.

(g) Unless extended under paragraph d., the applicant’s provisional registration will expire on the last day of the month after review of his application under paragraph d.  (Emphasis added)

[14] The Applicant did not immediately apply for provisional registration after receiving the 2014 Registration Committee Decision as he was unable to find employment.

[15] On August 11, 2016, staff at the College advised the Applicant that he had three years from the date of the Registration Committee decision to meet all the requirements for registration, i.e. his current time limit and application for registration would expire on October 7, 2017.

[16] On July 18, 2017, the Applicant applied for provisional registration as he had been offered a position with a provincial health authority starting in September 2017.

[17] On August 14, 2017, the College’s Registration, Inquiry and Discipline Admin Team emailed the Applicant advising him that he had been granted provisional registration from “18/09/2017 until 28/02/2018.”

[18] The Applicant began working with a health authority on October 16, 2017. On November 9, 2017, the health authority emailed the College advising that the Applicant had practised 75 hours before resigning his position due to personal reasons and returning to Ireland.

[19] Before returning to Ireland, the Applicant completed the CAEN on November 1, 2017. The CAEN report indicates that the Applicant requires further education and practice to meet entry level competencies for a registered nurse in BC in the four areas: professional responsibilities, general nursing knowledge, psychomotor skills, and physical assessment.

The 2017 Decision

[20] The minutes of the Registration Committee meeting of November 23, 2017, set out that the Committee considered the Applicant’s history of registration, Article 705(4)(b) of the Canadian Free Trade Agreement (“CFTA”) and the College’s policy on registering nurses who are registered in other Canadian jurisdictions and then decided as follows:

Decision

In accordance with the Canadian Free Trade Agreement (CFTA), and policy RID RC 1-12, the Registration Committee may impose additional training, experience, examination or assessment requirements as a condition of registration on a Canadian applicant who was educated outside of Canada and holds registration in a province or territory that does not have congruent assessment process to

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3 Article 7.05(4)(b) is set out later in this decision.
4 Policy RID RC 1-12 which is set out in more detail later in this decision.
CRNBC, if the applicant has not practised as a registered nurse in that province or territory for at least .5 of full-time for a minimum of 12 months preceding the date of application.

The Registration Committee has reviewed the application and competency assessment and determined that to demonstrate competence comparable to a Canadian RN graduate, the applicant must complete the following transitional education:

1) Introduction to the Canadian Health Care System and Nursing in Canada online course

2) Canadian Nursing Theory and Practice Online course

3) Psychomotor Skills course

4) Health and Physical Assessment course

5) Consolidated Clinical

The Committee also finds that as it now has evidence that the applicant does not satisfactorily meet CRNBC’s competence requirement, the applicant is no longer eligible for provisional registration. As per the limits and conditions set in the September 30, 2014 Registration Committee decision, the applicant’s provisional registration expires on November 30, 2017. To be eligible for practicing RN registration, the applicant must complete the educational requirements listed above.

[21] By email dated December 23, 2017, the Registration Assessor for the College advised the Applicant of the Registration Committee’s decision.

III MATERIAL CONSIDERED IN THE REVIEW

[22] In reaching my decision, I considered all the information that was before me whether specifically referenced in this decision or not, including:

- the Applicant’s January 12, 2018, Application for Review of a Registration Decision and attached letter;

- the 189-page Record;

- submissions from the Applicant and the College.

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5 Referred to in this decision as the “2014 Decision”.
6 I note that the College provided 311 pages of documents which it referred to as the Registration Record for the Applicant. The documents found at pages 190-311 are reference materials including the College’s Bylaws, Part 4, the College’s Policies RID RC1-46 re: Provisional Registration and RID RC1-12 re: Assessment of Canadian Applicants Including B.C. Graduates, the Labour Mobility Act, Article 706 of the Agreement on Internal Trade and Chapter 7 of the Canadian Free Trade Agreement and the College’s Competencies in the Context of Entry Level Registered Nurse Practice in British Columbia.
I am mindful of the legislative regime governing the College when considering applications for registration from nurses.

IV LEGISLATIVE FRAMEWORK

Statutory Provisions Governing Registration of Nurses

Section 16(1) of the Health Professions Act, R.S.B.C. 1996, c. 183, (the “Act”) provides that health professions colleges have a duty to serve and protect the public and to exercise their authority under the Act in the public interest.

Section 20(1) of the Act provides that the Registration Committee is responsible for granting registration of a person as a member of the College. Section 20(2) requires the registration committee to grant registration to every person who, in accordance with the bylaws, applies to the College for registration, pays the required fees and “satisfies the registration committee that he or she meets the conditions or requirements of registration in a class of registrants.”

Sections 20(4.3) and (4.4) of the Act specifically address “provisional registrants”:

20(4.3) If a bylaw under section 19 (1) (i) establishes a class of provisional registrants for the purposes of this subsection, the registration committee may

(a) grant registration in the class for a limited period specified for the registrant by the registration committee,

(b) require the registrant to complete, within the period specified under paragraph (a), any examinations or upgrading of knowledge, skills or abilities the registration committee considers necessary for the registrant, and

(c) impose limits or conditions on the practice of the designated health profession by the registrant.

(4.4) Limits or conditions imposed in accordance with subsection (2.1), (3), (4.2) or (4.3) may be different for different registrants within a class of registrants.

Section 20(4.3) applies only if a College has passed a bylaw under section 19(1)(i) of the Act. Section 19(1)(i) states:

19 (1) 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:

(i) establish a class or classes of registrants, including, if authorized in accordance with section 12(2)(g.3), a class of restricted or provisional registrants for the purposes of section 20 (4.2) or (4.3), respectively, and specify if members of a class are eligible to vote in an election referred to in section 17 (3) (a) or to be elected under section 17 (3) (a):..

Section 19(1) of the Act also includes several provisions allowing the College to make bylaws concerning conditions or requirements for registration:
(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.1) specify academic or technical programs that are recognized by the college as meeting a standard established under paragraph (m) (i);

(m.2) provide for the examinations that may be required, used or relied on by 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;

(m.3) establish conditions or requirements for eligibility to take examinations referred to in paragraph (m.2) and procedures respecting the conduct of examinations, and authorize a committee established under paragraph (t) or the registrar to establish additional examination procedures consistent with the bylaws;

(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.

The College Bylaws

[29] College Bylaw 4.02 sets out the classes of registrants established by the College and includes provisional registrants.

[30] College’s Bylaw 4.04 sets out the requirements for registration:

4.04 (1) For the purposes of section 20(2) of the Act, the requirements for registered nurse registration are

   (a) successful completion of a registered nurse education program recognized by the board for the purpose of registration and specified in Schedule C,

   (b) successful completion of the examination(s) required by the registration committee,

   (c) evidence satisfactory to the registration committee that the applicant is competent to practise as a registered nurse registrant, and

   (d) receipt by the registrar of

      (i) a completed application for registered nurse registration in Form 2,
(ii) an original transcript, or other evidence satisfactory to the registration committee, reflecting the applicant’s degree or diploma, and evidence satisfactory to the registration committee that the applicant is the person named therein, and

(iii) the items required under section 4.03(1)

[31] College By-law subsections 4.04 (2) provides for registration of nurses who are registered or licensed in another Canadian jurisdiction:

4.04 (2) Despite subsection (1)(a) to (c) and (d)(ii), an applicant may be granted registered nurse registration by the registration committee if the applicant

(a) holds registration or licensure in another Canadian jurisdiction as the equivalent of a registered nurse registrant, which is not subject to any practice limitations, restrictions or conditions in that jurisdiction that do not apply generally to registered nurse registrants in British Columbia, and provides evidence satisfactory to the registration committee of the applicant’s registration or licensure, and that the applicant is the person named therein,

(b) provides evidence satisfactory to the registration committee that the applicant meets any applicable continuing competence and quality assurance requirements established by the applicable regulatory or licensing authority in the jurisdiction referred to in paragraph (a), and

(c) meets the requirements in subsection (1)(d)(i) and (iii).

[32] College By-law section 4.11 provides for provisional registration where the Registration Committee is satisfied that the applicant for registered nurse registration has provided evidence to the Committee’s satisfaction that he or she has a combination of knowledge, skills or abilities such that the applicant is competent to practise nursing, as if registered, but subject to certain limits or conditions imposed by the Committee.

[33] I am also mindful that the College is bound by the provisions of the Canadian Free Trade Agreement (the “CFTA”) when considering applications for registration from nurses who are already licensed or registered in another Canadian jurisdiction.

**Statutory Provisions Governing Movement of Certified Workers within Canada**

[34] The CFTA came into force on July 1, 2017. The CFTA reaffirms the labour mobility provisions and obligations that were established under the 1995 Agreement on Internal Trade (“AIT”).

[35] The “labour mobility” provisions of the CFTA (Chapter 7) state that certified workers must be recognized as qualified to work by a regulatory body in another province or territory which regulates that occupation, without having to go through significant additional training, work experience, examination or assessment, unless an exception has been posted. In British Columbia, the only exception that has been posted is for lawyers.

[36] The *Labour Mobility Act, S.B.C. 2009, c. 20* (the “LMA”) makes the mobility provisions in the AIT (and now the CFTA) enforceable against professional regulatory
bodies in British Columbia. Section 3(4) of the LMA provides that a regulatory authority, such as the College, may impose conditions on certification (i.e. registration)⁷ that it is otherwise authorized to impose and that are consistent with Chapter Seven of the Agreement.

[37] Article 705.1 of Chapter Seven provides that a worker (including a nurse) who is certified for an occupation by a regulatory authority (i.e. a College) in one Canadian jurisdiction shall, upon application, be certified for that occupation by each other Canadian jurisdiction that regulates that occupation (e.g. the College)

without any requirement for any material additional training, experience, examinations, or assessments as part of the certification procedure. (emphasis added)

[38] Article 705.4 sets out the conditions under which a regulatory body in a province or territory may refuse to certify, or may require additional training, experience, examinations or assessments prior to certifying a worker who is certified for that occupation in another Canadian jurisdiction:

4. Nothing in paragraphs 1 or 2 limits the ability of a regulatory authority of (a Province or Territory) to:

   (b) impose additional training, experience, examinations, or assessments as a condition of certification if the person has not practiced the occupation within a specified period of time. (emphasis added)

College Policy on Canadian Practise as a Registered Nurse

[39] College Policy RID RC-1-12, “Assessment of Canadian Applicants including B.C. Graduates” was created in 2008.. As I understand it, this policy is meant to guide College staff and the Registration Committee when considering applications from applicants who are already registered in Canada and, as a result, are subject to the labour mobility provisions of the CFTA and the LMA. The Review Board was provided with two versions of this policy; the first, created February 1, 2008, was revised July 17, 2012 (the “2012 Policy”), and the second, created February 1, 2008, was revised Nov 3, 2015 and reviewed by the Board on Dec 4, 2015 (the “2015 Policy”).

[40] Both the 2012 Policy and the 2015 Policy state their purpose as “Under Part 4 of the Bylaws, applicants for registered nurse registration or provisional registration must provide evidence of competence to practice as a registered nurse.” Under the heading “POLICY,” both versions provide for Canadian registrants, as follows:

   POLICY

   Canadian registrants:

⁷ Under the LMA certification is defined in section 1 to mean “a certificate, licence, registration or other form of official recognition issued to the worker by the regulatory authority of a Canadian jurisdiction that attests to the worker being qualified and, if applicable, authorized to do one of both of the following:

   (a) Practise a particular occupation…”
Applicants for initial registration who are registered in good standing in another Canadian jurisdiction may apply for an equivalent class of registration in British Columbia. Such applicants must meet the good character requirement as per RID B1-07 and equivalent fluency requirements.

**Applicants with current practicing registration in another Canadian jurisdiction:**

If the applicant was not educated in Canada, and has been registered in a Canadian jurisdiction which does not have congruent requirements to CRNBC for the demonstration of substantially equivalent competence, the applicant must have practised as a registered nurse in that jurisdiction for at least .5 of full time, for a minimum of 12 months, preceding the date of the application. Applicants without such registered nurse practice will be referred to the Registration Committee for review. The Committee has discretion to require the applicant to undergo a SEC assessment and/or impose other additional training, experience, examination or assessment requirements, considered appropriate by the Committee, as a condition of the applicant’s eligibility for registered nurse registration in British Columbia. These may be required in accordance with section 3(4)(c)(i) of the Labour Mobility Act and Article 706 (4)(b) of the Agreement on Internal Trade.\(^8\) (emphasis added)

**Statutory Provisions Governing the Review Board**

[41] Section 50.54 of the Act allows an applicant in receipt of a registration decision, the right to request a review by the Review Board. “Registration decision” is defined in s.50.5 of the Act as follows:

"registration decision" means a decision made by a registration committee

(a) to refuse to grant an application for registration as a member of a college under section 20, except for a refusal under section 20 (2.1) or (3),
(b) to grant registration in a class of registrants under section 20 with limits or conditions on the practice of the designated health profession by the registrant, except limits or conditions imposed under section 20 (2.1) or (3), or
(c) if a college has established one or more classes of certified non-registrants, to refuse an application for certification as a certified non-registrant.

[42] The review is a review on the Record, but the Review Board may hear evidence that is not part of the Record if that evidence is reasonably required by the Review Board for a full and fair disclosure of all matters related to the issues under review.

[43] The Review Board is given the following remedial authority on a registration review:

50.54(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.

The Review Board may make an order directing the Registration Committee to grant registration to an applicant in certain circumstances:

50.54 (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 on 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 registration committee is obliged under the Labour Mobility Act to grant registration or certification.

(11) The following conditions apply for the purposes of subsection (1)(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 competencies or other qualifications required for registration in a class of registrants…

V DISCUSSION AND ANALYSIS

The Applicant’s submission

The Applicant has asked the Review Board to review the Registration Committee’s 2017 Decision. As I understand his reason for requesting a review, he
believes the College’s decision to require him to complete further (transitional) education to demonstrate his competence was unfair and made in bad faith. He submits that he has done everything required of him so far to be registered:

- he wrote and passed the CRNE and was registered by the CRNNS in 2013;
- when he was unsuccessful at a job posting in that province, he applied to British Columbia in 2014;
- In BC, the College required him to undergo the CAEN before he could obtain full registration. He obtained employment with a health authority but had to leave and return to Ireland after only 2 weeks in the position; he underwent the CAEN prior to leaving Canada. He believes the CAEN assessment unfairly assessed his skills and abilities;
- He will be returning to work as a peri-operative nurse in Ireland in February 2018.

[46] The Applicant submits that the College ought not to have considered several factors in its decision. First, he says that the fact that he did not pass the CRNE until his fourth attempt is irrelevant to the 2017 Decision. Second, he submits that the College ought not to have viewed his delay in undergoing the CAEN from 2014 when he was granted his provisional registration until he undertook the assessment in 2017. He explains that between 2014 and 2016 he became a father to two children and had no time to undertake the assessment. Third, he submits that the College ought not to have been concerned that he did not apply for licensing immediately after being registered in Nova Scotia; without employment the license would be a waste of money.

[47] In his Application for Review, the Applicant stated under the heading “Relief Being Sought”:

Fair Decision from CRNB, which enable me to apply for full license on future. More explanation about the same on attached letter.

[48] While it is not entirely clear from the letter attached to the Application for Review or the Applicant’s submissions precisely what relief the Applicant seeks from the Review Board if he were to be successful in his Application for Review, I understand him to be asking the Review Board to direct the College to allow him to be registered if he completes only the two online courses noted in the 2017 Decision, i.e. Introduction to the Canadian health care system and nursing in Canada and Canadian nursing theory and practice. He submits that to complete the remaining courses and the Consolidated Clinical program, he would have to quit his nursing position in Ireland and incur considerable expense with “nothing in return but uncertainties.” He implies that asking this of him is unfair.

The College’s submissions

[49] The College submits that it is only the 2017 Decision which is under review, and it is reasonable and justified in the circumstances and the Review Board ought to not to send the matter back to the Registration Committee with a direction to change the educational requirements for future registration as the Committee is entitled to
deference on such matters. The College submits that there are no grounds for the Review Board to substitute its discretion for that of the Registration Committee and order that the Applicant be registered. The College submits that the Review Board ought to confirm the Committee’s decision.

[50] The College further submits that because the Applicant was registered in Nova Scotia when he applied to the College in 2014, the LMA applied to that application. The LMA makes the mobility provisions of the AIT (and its successor the CFTA) enforceable against professional regulatory bodies such as the College. The College submits that under Chapter Seven of the CFTA, a person who has already been certified for the practice of a profession in another Canadian province or territory is presumed to have achieved the necessary standards for admission into that profession and ought not to be required to re-establish that they meet those standards when seeking admission in another province or territory. However, Chapter Seven allows for exceptions to this presumption. The College submits that Article 706(4) of the AIT (now Article 705.4 of the CFTA) provides for exceptions to this presumption to protect the public. Article 706(4)(b) of the AIT (Article 705.4(b) of the CFTA) authorizes professional regulatory agencies to impose conditions on certification where the person has not practised the occupation within a specified period.

[51] The College submits that the 2012 and 2015 Registration Policy implements Article 706(4)(b) of the AIT (Article 705.4(b) of the CFTA) by requiring internationally educated nurses who have been registered in another Canadian province or territory and who have not completed a competency assessment, to practise as a registered nurse in the originating Canadian jurisdiction for at least .5 of full time for a minimum of 12 months, preceding the date of their application to the College. Applicants who do not have this Canadian experience are referred to the Registration Committee. The intent of the policy is to ensure that applicants cannot use the labour mobility laws to avoid the College's initial application requirements and to ensure that all internationally educated nurses have substantially equivalent entry-level nursing competencies to those of a newly graduated nurse in BC.

[52] The College states that the Applicant was referred to the Registration Committee in 2014 because he did not have any Canadian nursing experience prior to applying to the College. The Registration Committee considered the Applicant’s application and determined that he was eligible to be provisionally registered subject to certain conditions. Included in those conditions was a requirement that, within six months of being granted provisional registration, the Applicant complete the CAEN program (or another competency-based assessment satisfactory to the Committee).

[53] Finally, the College submits that the 2014 Decision is not under review, except to the extent that it is relevant to the Review Board’s review of the 2017 Decision.

[54] The College observes that the Applicant did not immediately apply for provisional registration after receiving the 2014 Decision. Instead, he applied in 2017 after he found employment with a health authority and was granted provisional registration on August 14, 2017.
[55] The College submits that, according to the terms of the 2014 Decision, the Applicant’s provisional registration would expire on the last day of the month after the additional review of his application by the Committee, unless otherwise extended. As the Committee reviewed the results of the Applicant’s CAEN at its November 23, 2017, meeting and decided not to extend his provisional registration, his provisional registration ought to have expired on December 31, 2017 - not February 28, 2018, as per the College’s email to the Applicant of August 14, 2017, nor November 30, 2017, as per the 2017 Decision as conveyed to the Applicant on December 23, 2017.

[56] The College observes that much of the Applicant’s submissions deal with the CAEN assessment process and with his dissatisfaction with the results of the assessment. The College submits that the Review Board does not have jurisdiction over the institution that administered the CAEN, nor does the College. That said, the Registration Committee considered the Applicant’s concerns regarding the CAEN. Given the Registration Committee’s expertise in matters involving the assessment of nursing knowledge and skill, the Review Board ought to defer to the Committee about the CAEN absent evidence of unfairness or bad faith on the part of the university administering the assessment, the College or the Committee.

[57] In response to questions posed by me regarding the condition placed on the Applicant’s provisional registration as set out in the 2014 Decision, the College submits that as the Applicant is no longer a registrant in another Canadian jurisdiction, the LMA and the CFTA are not applicable to him; they applied only to the 2014 Decision. Even if the labour mobility provisions did apply to him, the Applicant’s situation would be covered by an exemption as he has never practised in Canada. In short, the College submits that the Committee was entitled to require the Applicant to demonstrate his competence by undergoing the CAEN.

[58] The College submits that in the 2017 Decision, the Registration Committee properly considered the gaps in the Applicant’s knowledge, skills and abilities as demonstrated in the CAEN and considered how best to remediate the gaps. Given the Applicant’s short work experience at a health authority in BC and the commensurate absence of a performance evaluation, the College submits that it was reasonable for the Committee to require the Applicant to take further educational courses and consolidate his coursework through practical hands-on experience to show that he is able to safely work in the Canadian context.

[59] The College submits that there is no basis for the Review Board to direct the Committee to register the Applicant as none of the conditions of ss. 54.54(10) or (11) apply. That is to say that there is no evidence that the Registration Committee failed to act fairly in considering the application for registration or certification, or that the Applicant is a person to whom the Registration Committee is obliged under the LMA to grant registration.

[60] Further, the College submits that the 2017 Decision to require the Applicant to complete remedial coursework before being permitted to practise nursing with provisional or full registration is reasonable.

9 See Policy RID RC1-12 implementing Article 705.4(b) of the CFTA.
Findings:

[61] The Registration Committee’s 2014 Decision is the foundation upon which the 2017 Decision was built. In my view, the foundation is a shaky one. I make this observation for two reasons. First, the Registration Committee Minutes for the September 30, 2014, meeting note that the Committee based its decision, at least in part, on three key premises:

- when the Applicant applied for registration with the College, he was registered as a nurse in Nova Scotia but had not practised as a nurse in that province “for at least .5 of full-time for a minimum of 12 months preceding the date of application as specified in policy RI&D B-12”;
- the Applicant had not undergone a competency assessment prior to being registered in Nova Scotia, and
- the Committee had discretion to impose a requirement that the Applicant undergo a competency assessment under the exemptions to the labour mobility provisions in the AIT (now the CFTA) and the LMA.

[62] In my view, the first and third premises may be faulty.

[63] As to the first premise, it is not clear to me that the College’s policy, (which I take to be the same policy as the College provided to me, that bears the number policy RID RC 1-12) correctly sets out the basis for a professional regulatory agency to decline to accept the competency of an applicant who has been registered in another Canadian jurisdiction. Article 705.4(b) of the CFTA which preserves the Committee’s ability to impose additional training, experience, examinations or assessments as a condition of registration, stipulates that it applies “if the (applicant) has not practised within a specified period of time.” The Committee appears to have interpreted Article 705.4(b) as if it permitted the imposition of further requirements on an applicant for registration where the applicant “has not practised in the original Canadian jurisdiction within a specified period of time.” With respect, that is not what the article says and had the drafters of the agreement intended that result, they could easily have said so.

[64] The basis for the second premise is established in the Record.

[65] As I observed above, it is arguable that the Committee erred, in 2014, when it read-in a requirement for the Applicant to demonstrate a minimum of twelve months’ Canadian practical experience to be exempted from proving his competency. If the Committee erred and the Applicant was entitled to have his competence accepted, then it is arguable that the Committee’s third premise, was incorrect. That is to say, that it is arguable that the Committee had the discretion to require that the Applicant undergo a competency assessment and to have the results of that assessment be satisfactory to the Registration Committee to have his provisional registration continued.

[66] While these issues are troubling to me, I have concluded that for the purposes of this review, I need not decide them for the reasons that follow.
The outcome of the Registration Committee’s deliberations in 2014 was that, (whether based on a mistaken belief as to the Applicant’s labour mobility rights and his need to satisfy the Committee as to his competence to practise nursing), the Committee determined the Applicant was eligible to be provisionally registered. The Applicant could have applied to have the 2014 Decision reviewed and could have asked the Review Board to exercise its authority under s.50.54(10(b), to direct the Registration Committee to register him as a person to whom the Registration Committee was obliged under the LMA to grant registration. He did not do that and it is not appropriate for me to speculate whether the Review Board might have made that order.

I find that the Applicant not only did not apply to review the 2014 Decision, he accepted it and applied for provisional registration within the time permitted by the College and subject to the conditions set out in the 2014 Decision. One of those conditions was that, “within six months of the granting of provisional registration, the applicant must complete a Competency and Enhancement for Nurses (CAEN) Program (or other competency-based assessment) satisfactory to the Registration Committee.” Another condition was that, following completion of the assessment, the Registration Committee would review the results and determine whether to grant the Applicant full registration or to extend his provisional registration.

I am satisfied that the Applicant knew that his registration status was dependent on the Registration Committee being satisfied with the results of his competency assessment and applied for provisional registration on that basis.

I have pondered whether the 2017 Decision can be reasonable when it is based, at least in part, on some of the problematic assumptions that underlay the 2014 Decision and when the reasons for the decision fail to satisfy all the accepted indicia of reasonableness, i.e. clarity, transparency and justification.

The written reasons for the decision are neither clear nor entirely justified. The reasons lack clarity in that they group together under the heading “Decision Factors” assumptions that the Committee made in 2014 (some of which are arguable) and information that had been gathered since 2014 including:

- the Applicant was not entitled to a presumption of competence under the CFTA and the LMA;
- the College was entitled to impose additional requirements on an applicant who had already been registered in Nova Scotia;
- the College was entitled to require the Applicant undergo a competency assessment to prove that he had the equivalent competence to a new Canadian RN graduate;
- the Applicant was eligible for provisional registration and was granted provisional registration effective September 18, 2017;
- the Applicant received an offer of employment from a health authority but worked only 75 hours at a hospital before resigning;
• the Applicant completed the CAEN on November 1, 2017; he scored 44% in Canadian context and 50% on general nursing knowledge.

[72] The reasons lack clarity as to when the Applicant’s provisional registration would expire. The decision reference November 30, 2017, yet the Applicant was advised in August 2017 that he had been provisionally registered until February 28, 2018. Further, the 2014 Decision sets the date of expiration at the last day of the month following its review of his competency assessment. That would have set the date at December 31, 2018.

[73] Further, under the heading “Decision,” the reasons stipulate that the Registration Committee may impose additional training, experience, examination or assessment, “(i) in accordance with the Canadian Free Trade Agreement (CFTA) and policy RID RC 1-12.” The Applicant, however, was no longer registered in Nova Scotia in November 2017 and was not subject to the mobility provisions of the CFTA or the LMA and so that agreement and legislation had no bearing on the 2017 Decision. As a result, the Registration Committee did not have to consider whether the Applicant’s competence to practise nursing was presumed and whether the Committee needed to justify exempting him from that presumption and requiring him to establish his competence to the Committee’s satisfaction.

[74] I am satisfied that the Committee was entitled to consider whether it was satisfied that the Applicant had demonstrated that he had competence comparable to a Canadian RN graduate. Further, given the 2014 Decision which the Applicant accepted, I am satisfied that the Registration Committee was required to assess the Applicant’s performance in the CAEN as an evaluation of that assessment was a condition of his ongoing registration. It is clear from the decision that the Committee carried out that evaluation. To the extent that the 2017 Decision is based on the Committee’s evaluation of the Applicant’s competence, it was justified.

[75] I am further satisfied that it was justifiable for the Registration Committee, in assessing the Applicant’s competence to consider his history of attempting the CRNE; his scores on the CAEN, the areas of weakness noted in that assessment and the assessor’s recommendations; the lack of a performance evaluation from a Canadian employer, and the Applicant’s employment experience abroad. I also find that it was reasonable for the Registration Committee, having considered all the above, to decide that the Applicant does not satisfactorily meet the College’s competence requirements and to decline to extend his provisional registration.

[76] In sum, while the reasons for the 2017 Decision only partially meet the accepted indicia of reasonableness in that they are not easily understood. That said, the reasons transparently set out the factors that the Committee considered, and the decision was justified, in the result. I am satisfied that no useful purpose would be achieved by sending the matter back to the Registration Committee for reconsideration where, as here, I am satisfied that the result was reasonable.

[77] I appreciate that the Applicant disagrees with the Registration Committee and firmly believes that he is competent to practise nursing in BC. I can also appreciate that he believes that the assessment does not fairly reflect his competence. That said, I am
satisfied that the Registration Committee considered the Applicant’s concerns with the
assessment in the context of all the information before them. I find that the Registration
Committee did not blindly accept the recommendations of the CAEN but, instead,
turned its mind to the transitional education that it was satisfied the Applicant needed to
practise safely in Canada. The Applicant has not satisfied me that the 2017 Decision
was unfair or that the Committee acted in bad faith in setting the Applicant’s educational
requirements for eligibility for future registration.

[78] To the extent that the Registration Committee found that the Applicant would
need to complete four courses and a Consolidated Clinical Program to demonstrate his
competence, I defer to the Registration Committee. I am not a nurse nor am I medically
trained, and I find that the Registration Committee members are better qualified than me
to assess the education necessary to address the shortcomings in the Applicant’s
knowledge, skills and abilities.

[79] I empathize with the Applicant’s dilemma. He does not want to leave his position
in Ireland and incur the time and expense of returning to Canada and taking further
education when he is not guaranteed a result. That does not mean that it is
unreasonable for the Registration Committee to require that of him. The Committee is
tasked with ensuring that the internationally educated nurses that it registers and
licenses are as competent as the new Canadian graduates of nursing who are
registered by the College. There is nothing unfair about that. It is in the public interest
that only those individuals who can demonstrate such competence are registered and
licensed to practise nursing.

VI CONCLUSION

[80] For all the above reasons, I order that the Registration Committee’s 2017
Decision to decline to extend the Applicant’s provisional registration and to require him
to complete further coursework prior to being granted either provisional or full
registration in the future is confirmed.

“Brenda L. Edwards”
______________________
Brenda L. Edwards, Panel Chair
Health Professions Review Board