CITATION: Applicant v. College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia

DECISION NO.: 2018-HPA-127(a)

DATE: June 7, 2019

In the matter of an application (the “Application”) for review under section 50.54 of the Health Professions Act, R.S.B.C. 1996, c. 183, (the “Act”) of a registration decision made by a registration committee

BETWEEN: The Applicant APPLICANT

AND: The College of Traditional and Chinese Medicine Practitioners and Acupuncturists of British Columbia COLLEGE

BEFORE: Leigh Harrison, Panel Chair REVIEW BOARD

HEARING DATE: Conducted by way of written submissions closing on November 13, 2018

APPEARING: For the Applicant: Self-Represented

For the College: Angela R. Westmacott, Q.C., Counsel

DECISION ON AN APPLICATION FOR REVIEW

I INTRODUCTION AND PROCEDURAL BACKGROUND

[1] The Applicant has filed an application for review of an August 28, 2018, decision of the Registration Committee of the College (the “Committee’s 2018 Decision”) in which the Committee determined that the Applicant’s educational credentials did not satisfy the College’s registration requirements to write the exam to become a fully registered Traditional Chinese Medicine Practitioner (R.TCMP).


[3] The Applicant is a graduate of a traditional Chinese medicine degree program in a foreign country. She applied to the British Columbia College of Traditional Chinese
Medicine Practitioners and Acupuncturist of British Columbia (the “College”) to be registered as a R.TCMP.

[4] Before coming to Canada and prior to obtaining her traditional Chinese medicine degree, the Applicant had obtained a professional diploma from a three-year post-secondary program in her native country.

[5] The bylaws of the College provide that before she would be eligible to write the required exam and be fully registered with the College here in British Columbia, she would have to satisfy the Registration Committee that her academic qualifications complied with s.48 of the bylaws, which provide, among other things,:  

(1) For the purposes of section 19(2) of the Act, the requirements for full registration are  
(a) graduation from a traditional Chinese medicine education program recognized by the Board for the purpose of registration and specified in Schedule H,  
(b) (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.

[6] The Committee accepted that the Applicant’s traditional Chinese medicine degree met the requirements of s.48(1)(a) of the College bylaws.

[7] The Committee concluded, however, that the Applicant’s three-year diploma in an “accredited post-secondary program” was not the equivalent of the “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” as per s.48(1)(a.1).

[8] The bylaws however confer discretion on the Committee as follows:

48(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 (my emphasis)  
(a) provides evidence satisfactory to the registration committee, of such knowledge, skills and abilities, and  
(b) meets the requirements established in subsections (1)(b) to (d) and 2(a), (b), (d), (e) and (f).
In this regard the Committee said as follows, “the Committee, for determination on the eligibility for the future examination, invites you to submit a Prior Learning Assessment Report (including the program plan, transfer/challenge/PLAR record, etc.), from a chartered/approved university to confirm that your knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement in the competencies or other qualifications established in bylaw 48(1).” (Hereafter the Prior Learning Assessment Report will be referred to as a “PLAR”).

It is this decision that the Applicant has applied to review.

II STATUTORY PROVISIONS GOVERNING THE REVIEW BOARD

Section 50.54 of the Act provides an applicant in receipt of a registration decision the right to request a review of the decision by the Review Board if he or she is dissatisfied with the result. Under s.50.5(a) of the Act, a “registration decision” is defined to include a decision made by a registration committee “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).”

A review of a registration committee decision is a review on the record: Act s.50.54(7).

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

s.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 power of the Review Board to grant registration is limited under s.50.54(9) of the Act in that the Review Board may only 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, if the Review Board is satisfied that
(a) all 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 APPLICATION FOR REVIEW


[16] As I read the Applicant’s submissions, they are essentially a re-statement of her points to the College, with further explanation of why her three-year “post-secondary education” should be considered to be the equivalent of two years of university liberal arts or sciences study as set out in by law 48(1)(a.1).

IV STAGE 1 OR STAGE 2

[17] This Application has been referred to a Stage 1 hearing. At this stage the following results are possible:

(a) I may confirm the Registration Committee disposition under section 50.54(9)(a) of the Act if the applications for review can be fairly, properly and finally adjudicated on the merits without the need for submissions from the College; or

(b) I may determine that the Application requires adjudication after a Stage 2 hearing, in which case no decision will be made until submissions from the College, and further, reply submissions from the Applicant have been provided.

[18] I have concluded it is appropriate to proceed by way of a Stage 1 hearing and accordingly, this review of the Committee’s dispositions is based solely on the record of investigation provided by the College (the “Record”) and submissions of the Applicant.

V DISCUSSION AND ANALYSIS

[19] By my reading of the Application for review, the Applicant is not suggesting that the onerous conditions of s.50.54(10)(a)(ii) have been met in terms of the Committee’s decision having been made arbitrarily, for an improper purpose, or based on irrelevant considerations. Certainly, I see no indication of any such factors being at play in this decision.

[20] Accordingly, in this case, I may only confirm the Committee’s decision or send it back for reconsideration with directions.

[21] It is clear that I must extend deference to the College in its determination of appropriate academic requirements for registration as a member of the College. It is not my role to substitute my opinions for those of the College in this regard.
While it perhaps might be usual to say somewhat more about the test the Review Board employs in these matters, given that the Board has decided cases that are essentially identical, and that in my view, except for one issue, this case is on point with those cases, I think it is sufficient to say only that the Committee’s decision needs to be reasonable in the sense of being understandable and justifiable, whether or not I, or others, might have come to the same decision.

I refer, in particular to the Review Board Decision No. 2016-HPA-122(a); 2016-HPA-123(a); 2016-HPA-124(a) (2016 BCHRB 117) which were consolidated as one decision and Review Board Decision No. 2015-HPA-176(a); 2015-HPA-181(a); 2015-HPA-183(a); 2015-HPA-185(a); 2015-HPA-186(a); 2015-HPA-187(a) (2016 BCHRB 46), similarly consolidated as one decision in this regard.

I would also refer to and rely on Review Board Decision No. 2017-HPA-038(a) (2018 BCHPRB 77) in so far as it accepts the Committee’s decision concerning whether or not the Applicant’s post-secondary education met the requirements of s.48(1)(a.1) of the College bylaw.

This latter decision however did refer back to the Committee the question of whether the Committee’s decision had adequately dealt with s.48(4), which to repeat, is the section which gives the Committee discretion 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 satisfies sub (a) and (b) of s.48 (4).

I think that the Review Board’s decision to refer the matter back to the College in 2018 BCHPRB 77 is significant; although this case differs from that case in a significant respect.

In the decisions quoted above, the Review Board set out in considerable detail both the history of the College requirements for registration but as well the policy considerations that the Committee and/or the College enacted. It is clear from reading the submissions of the College in that case, which refer extensively to their policies, that the College believes two years of University education in liberal arts or science are an important prerequisite for admission to the College.

The Review Board on several occasions has deferred to the College in this regard. In other words, the Review Board has concluded that it is not up to the Review Board to impose or read in a policy whereby two or three years of post-secondary “diploma” courses are deemed to be equivalent to two years of university courses.

It is clear from reading these decisions and the quoted College policies that the College feels it does not have the resources to assess academic qualifications from innumerable institutions all over the world, and therefore routinely refers questions of whether foreign academic qualifications comply with College bylaw s.48(1) (a.1) to
International Credential Evaluation Service ("ICES"), an organization affiliated with the British Columbia Institute of Technology.

[30] In the cases referred to above, it was the ICES evaluation that concluded that the Applicants’ post-secondary courses were not the equivalent of liberal arts university courses. In the above quoted decisions, the Review Board accepted that the ICES evaluation was an appropriate resource for the Committee to use to fill this knowledge/resources gap, so long as the Committee still exercised independent judgment and discretion. I concur.

[31] As the Review Board however makes clear in 2018 BCHPRB 77, the ICES report is not the end of the matter in terms of whether an Applicant is entitled to be allowed to write the competency exam. The discretionary aspects of s.48(4) must also be appropriately considered by the Committee. That decision makes clear that s.48(4) is not simply another way of reiterating the s.48(1)(a.1) test. In other words, the Committee cannot simply fold its arms and say that unless a candidate has two formal years of liberal arts or science university education as set out in that section, they cannot qualify. The Committee must apply s.48(4) in good faith and in accordance with its clear intention that this section is in addition to s.48(1)(a.1), not just a different way of expressing that section. I agree with that interpretation.

[32] As I read that decision, the Review Board was not satisfied that the Committee had truly exercised the statutory discretion conferred by s.48(4) in that particular case, and accordingly remitted it back to the Committee for further consideration.

[33] The above Board decision was given on June 11, 2018, and this Committee decision was rendered August 28, 2018. It is not clear to me that the Committee has revised or changed its policies in the interim, or because of the June decision, but the Committee decision in this case adds on some interesting comments and suggestions as part of its decision.

[34] It said, in part:

The Committee, for determination on the eligibility of the future examination, invites you to submit a prior learning assessment report (including the program plan, transfer/challenge/PLAR record, etc.) from a chartered/approved university to confirm that your knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications established in bylaws s.48(1)(a.1).

To state the obvious, the above is simply setting out the s.48(4) bylaw test.

[35] As far as I can tell, this specific invitation was not given to the applicants in the cases referred to above as part of the Committee’s decisions.

[36] PLAR is a service which many universities and Colleges, apparently both in Canada and the United States (and perhaps elsewhere) provide for applicants to their
respective institutions who are seeking credit towards a bachelor’s degree based on their “knowledge, skills and abilities.”

[37] As I read the Committee’s decision, it chose not to render a final decision on this matter, at least in so far as a PLAR assessment might establish that the Applicant had qualifications “substantially equivalent to the standards of academic or technical achievement and competencies or other qualifications established in bylaw s.48(1)(a.1).”

[38] I understand the costs of a PLAR determination are fairly modest and certainly nothing like undertaking the costs of a further two years of university education.

[39] It seems to me that the Committee’s invitation to the Applicant to provide them with a PLAR assessment is still open and they have not made a final decision as to substantial equivalency in this matter should she choose to provide such material. In other words, I cannot fault the Committee for not exercising their discretion under bylaw s.48(4) because they are clearly giving the Applicant an opportunity to provide further information before they do so. I acknowledge that the Applicant may have considered and rejected the idea of obtaining a PLAR assessment, in which case the Committee decision will stand by default.

[40] I do however affirm the Committee’s decision not to accept the Applicant’s post-secondary education as being the equivalent of the required university education based on only having the ICES report before it, as this case is on all fours with 2018 BCHPRB 77 in that regard.

[41] Should the Applicant undergo the PLAR assessment and submit the results to the Committee, in my respectful view, the Committee must then consider in good faith, not whether the Applicant’s “knowledge skills and abilities” are the same as 2 years of university education, but whether they are “substantially equivalent.” In other words, the Committee, in my view, should not be using s.48(4) as if it were just another way of repeating requirements of s.48 (1)(a.1).

[42] I am assuming that the College has established that a PLAR assessment could meet the requirements of s.48 (4) before suggesting that the Applicant undertake the time and expense of that process.

[43] To be frank, aspects of 2017 BCHPRB 77 trouble me in this regard, albeit with respect to s.48 (1) (a.1).

[44] In that case the applicant had obtained, among other things:

A letter from (a) university’s “Arts and Sciences Advising Team” to the Applicant stating that, “(a)ccording to our analysis, you have completed 66 credits toward the [Bachelor of Arts] degree (this includes any TRU-OL courses currently in progress) and have 54 credits remaining;" (para. [34])
[45] The College refused to accept this letter as establishing that the Applicant had obtained two years of credit towards a liberal education B.A. (as per s.48(1)(a.1)) saying:

   In relation to the (Canadian university) transcript, the Registration Committee does not accept block transfers of credits.

[46] The College gave no reasoning or rationale for refusing to accept what, on its face, seems to be good compliance with the Section. Having read the decision, I am no wiser as to why “block credits” are unacceptable, though of course, there may be an understandable rationale, just not explicitly expressed in that case. I am not sure I would have come to the same conclusion as my colleague if this issue had been before me, but in this case, the Applicant has not submitted a similar letter. It is also not clear to me why this information wasn’t considered with respect to s.48(4) which is obviously part of why that case has been referred back to the College on the question of s.48(4) and the letter may still be helpful to the College dealing with its’ discretion under that section.

[47] I should say that a PLAR determination might not support the Applicant’s contention, or could in theory, award less than a two-year equivalency which could, nonetheless, reduce the amount of university education the Applicant would have to undergo to meet the Committee’s requirements.

VI CONCLUSION

[48] I confirm the Committee’s decision that the Applicant’s post-secondary studies do not meet the requirements of s.48 (1)(a.1).

[49] I find that the question of whether the Applicant can meet the requirements of College bylaw s.48(1)(a.1) via equivalency as determined under s.48(4) has not yet been decided by the Committee. If the Applicant does in future choose to provide the Committee with a PLAR assessment as they have invited her to do, and the Applicant is not satisfied with any consequent decision of the Committee on substantial equivalency, the Applicant is free to request a review of that decision by this Review Board.

Leigh Harrison, Panel Chair
Health Professions Review Board