

 Council on Licensure,  
Enforcement and Regulation

  
2010 Annual Educational Conference - September 23-25

Exploring the Challenges  
of Granting Testing  
Accommodations in  
Canada

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*Promoting Regulatory Excellence*

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**September 23-25**  
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1%-2% of the candidates submit requests for accommodation, e.g.:

- extra time
- separate room
- wheelchair access
- reader
- large print
- both French and English

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**Now What?**

- Part I. Legal Duty
- Part II. Candidate Challenges
- Part III. Managing requests
- Part IV. Creating policies

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Part I.

**Accommodation.. a legal duty**

- Ensures all persons are equal in dignity, rights and responsibilities with respect to the provision of services available to the public.
- Is the process of making alterations to the delivery of services so that they become accessible to more people, such as people with disabilities.

(Adapted from: Alberta Human Rights Commission [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca))

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**Legal basis for the duty to accommodate**

In Canada, the legal duty to provide testing accommodations is primarily found in:

Federal legislation:  
Charter of Rights

Provincial or territorial legislation:  
Human Rights

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**Federal legislation:  
Charter of Rights**

Section 15:

- “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination...”

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**Provincial or territorial legislation:  
Human Rights**

Usually found in Codes or Acts



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**Provincial or territorial legislation:  
Human Rights (cont'd)**

- Gives everyone equal rights and opportunities without discrimination in specific areas (e.g., services, facilities, etc).
- Prohibits discrimination based on various grounds (e.g., disability)
- Given a broad and liberal interpretation

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**Why not one uniform law for all of Canada?**

- Answer: When the colonial provinces joined to form Canada in 1867, they were reluctant to give up their powers over civil rights.

As such, professions are regulated provincially/territorially.

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**The role of case law**

- Always evolving
- Interprets the Charter and human rights legislation and applies it to specific circumstances
- Currently, little case law exists which can be relied upon to provide interpretive guidance regarding accommodations for licensure exams

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**Meeting your legal duty - What the duty to accommodate involves**

1. accommodation up to the point of undue hardship
2. action for which there is a bona fide and reasonable justification.

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**1. Accommodation up to the point of undue hardship**

Example of factors considered when evaluating undue hardship include:

- safety
- disruption to the public
- financial cost

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**2. Action for which there is a bona fide and reasonable justification**

- a. Is there a rational nexus between the policy and its objective?
- b. Was the policy adopted with an honest belief that it was necessary to accomplish its service-related purpose?
- c. Is the policy reasonably necessary for the program to accomplish its purpose.

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**Meeting your legal duty - Education and awareness is key**

- The duty to accommodate is a fundamental legal obligation...
- When setting up programs, policies, or services, it is important to reflect on designing them inclusively from the outset.
- Education and awareness about disability issues is key for those dealing with requests for accommodation.

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PART II - Candidate challenges

When do candidates challenge your accommodation measures?

At 5 different times,

namely...

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When do challenges arise?

- Long before exam day
- Before exam day
- On exam day
- After exam day and
- Long after exam day!

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When do challenges arise - rephrased

- During the initial registration
- Late request for accommodation
- Exam day issues
- Post exam day challenges
- Failing candidate challenges

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**Post exam day challenges**

I tried to sit in that desk with my broken leg but my wheelchair did not fit and so I was two feet away from the desk.

I was supposed to get large print and sit with lots of light but the print was not large enough and the room was too dark.

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**Failing candidate challenges**

Opportunities to adjust accommodation are over.

Anger, frustration, blame often leads to filing a human rights complaint.

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**Nature of response will have two measures**

1. Substantive component - this is the adequacy of the accommodation
2. Procedural component - this is the appropriateness of the process  
feelings,  
dignity and  
mental anguish.

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Letter from the Human Rights Office - a complaint has been filed

Assemble all accommodation information policies, practices, communication with the candidate.

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Typically the Human Rights office will investigate before prosecuting.

They will ask for pre-existing policies, procedures, correspondence and telephone notes.

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Initial Human Rights Officer has one primary objective:

Resolve this complaint or refer it for prosecution.

How do they resolve it?

- Candidate settlement
- Candidate withdrawal

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Commission's process:

- Settlement by correspondence and phone
- Face-to-face mediation
- Hearing

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Part III. Managing requests

**Goal**

To support reasonable and appropriate modifications to the exam procedure and/or materials to accommodate candidates with disabilities while maintaining the integrity of the exam.

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**Guiding Principles for Regulators**

- Verify that candidates met all regulatory requirements for eligibility to take the exam
- Inform candidates in advance that they can request testing accommodations
- Understand common categories of disabilities and related testing accommodations

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**Guiding Principles continued**

- Document disabilities to substantiate requests
- Base decisions on the nature of the disability and its impact on the candidate's ability to perform the tasks involved with taking the exam
- Maintain record of accommodation actions

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**Guiding Principles continued**

- Accommodation solutions should respect the dignity of exam candidates with disabilities
- Ensure confidentiality of records
- Identify clear accountabilities for the candidate, regulatory body and ASI.

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**How much information is required?**

- Need to balance privacy interests with information needs of the regulator and testing agency.
- The report should concentrate on the functional or other limitations that require accommodation.

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**How much information is required?**

The report should include expert or professional verification that the candidate has a legitimate functional limitation and a description of the limitation to help the test provider and regulator accommodate that limitation.

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**Statistics for Major Licensure Exam with Three Administrations**

Year	Accommodated
2005	34
2006	39
2007	68
2008	89
2009	97
2010	89

(first two administrations only)

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**Candidate Role**

- Submit testing accommodation request in a timely manner
- Submit formal documentation on the functional limitation and the need for specific accommodation
- Complete a Candidate Declaration Form if a recorder or reader is required. This forms releases the testing agency and regulating body from liability related to any unintentional errors in reading and recording

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### Regulator Role

- Inform candidates of availability of accommodation and deadlines
- Provide accommodation request form
- Confirm all supporting documentation is submitted
- Provide testing agency notification

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### Regulator Role continued

- Determine with testing agency if the request can be implemented
- Accommodate up to the point of undue hardship
- Assume all accommodation costs
- Provide testing agency all copies of candidate declaration forms and security declaration forms

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### Testing Agency Role

- Review all accommodation requests from a psychometric perspective
- Determine with regulator whether or not the request can be provided. Provide alternative accommodation as appropriate.
- Modifications to format as appropriate
- Maintain a record of all provided accommodations

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**Collaboration**

Accommodation should be a collaborative process, in which all parties strive to meet their obligations and responsibilities in good faith

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**Part IV. Creating policies**

- The Canadian Nurses Association:
  - The Canadian Nurses Association (CNA) is a federation of 11 provincial and territorial nurses' associations and colleges representing 139,893 registered nurses and nurse practitioners.
  - The Canadian Nurses Association (CNA) develops and maintains national licensing exams for RNs and NPs through its testing company, Assessment Strategies Inc., and in collaboration with the regulatory authorities.

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**Accommodation Policy**

- Created to provide nationally consistent procedures and guidelines around accommodation
  - Considerations for regulatory authorities
  - Required documentation
  - Process for considering requests

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Need for update

- Gap in decision-making guidelines
- New privacy and confidentiality legislation
- Lack of standardization around documentation

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National working group

- Review of case law
- Review of accommodations requests received across the country
- Draft of revised policy
- Survey to other regulatory associations

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Accommodation survey

- Sent to 28 national regulatory associations
- 25% response rate
- All had formal written policy

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Survey Results:  
Management of accommodation requests

- Receiving and managing the request
- Administrative record keeping
- Supporting documentation

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Survey Results  
Decision-making authority

- Final decision-making process
- Administrative record keeping
- Decision time frame
- Challenges

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Next steps

- Working group to review survey results
- Working group to review privacy legislation
- Formulate next draft of national policy
- Present to exam council

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### What have we learned

Accommodation is complex and evolving:

- Requires continuous partnership and collaboration with stakeholders
- Requires continuous monitoring of federal/provincial /territorial legislation
- Policy requires information and guidelines on appeals process and dispute resolution

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### Thank-you --- Questions?

*Speaker Contact Information*

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