Exploring the Challenges of Granting Testing Accommodations in Canada

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Promoting Regulatory Excellence

1%-2% of the candidates submit requests for accommodation, e.g.:
- extra time
- separate room
- wheelchair access
- reader
- large print
- both French and English
Now What?

Part I. Legal Duty

Part II. Candidate Challenges

Part III. Managing requests

Part IV. Creating policies

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)

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
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...”

Provincial or territorial legislation: Human Rights

Usually found in Codes or Acts

• 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
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.

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

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.
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

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.

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.
PART II - Candidate challenges

When do candidates challenge your accommodation measures?

At 5 different times,

namely...

When do challenges arise?

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

When do challenges arise - rephrased

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

Failing candidate challenges

Opportunities to adjust accommodation are over.
Anger, frustration, blame often leads to filing a human rights complaint.

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.
Letter from the Human Rights Office - a complaint has been filed.
Assemble all accommodation information policies, practices, communication with the candidate.

Typically the Human Rights office will investigate before prosecuting.

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

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
Commission's process:
Settlement by correspondence and phone
Face-to-face mediation
Hearing

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.

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
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

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.

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.
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.

Statistics for Major Licensure Exam with Three Administrations

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<th>Year</th>
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<td>2009</td>
<td>97</td>
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(First two administrations only)

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
**Regulator Role**

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

**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

**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
Collaboration

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

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.

Accommodation Policy

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

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

National working group

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

Accommodation survey

- Sent to 28 national regulatory associations
- 25% response rate
- All had formal written policy
Survey Results: Management of accommodation requests

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

Survey Results
Decision-making authority

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

Next steps

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

Thank-you --- Questions?

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