

Self Regulation: George M. Thomson Commission Report revisited



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Thomson Commission Report

- **Mandate:** To review the current appeal process for the regulated professions and to develop a proposal for a standard, independent appeal process.
- The Report covered 36 different regulatory bodies (21 health professions, 15 non-health professions), including professional engineers.

Thomson Commission Report

- Improvements to the existing appeal processes would be shaped by the following principles:
 - Transparency
 - Fairness
 - Accountability
 - Objectivity
 - Collaboration (between the self-regulated professions and other stakeholders)

Thomson Commission Report

- Key to Successful Appeal Process:
 - A well-functioning “front end” of the process.
 - Where internal registration processes are fair, effective, and well understood, applicants are less likely to feel aggrieved.

Thomson Commission Report

- Thomson's Approach:
 - An emphasis on procedural, rather than substantive, changes.
 - *Tchou-San-Da v. Association of Professional Engineers*, 2007 BCSC 1403

Thomson Commission Report

Recommended Measures:

- Establish a Fair Registration statute that sets out the basic requirements for all regulators.
- Collecting, verifying and disseminating promising registration practices and pilot testing different ways to achieve fair registration.
- Establish an independent appeal process.

Thomson Commission Report

- Elements of an Independent Appeal Process:
 - Adjudicators should not decide cases from their own profession.
 - Adjudicators should correct procedural deficiency and remand back to regulatory board for reassessment.
 - Must show deference to original decision makers when dealing with specialized expertise.

Thomson Commission Report

- Elements of an Independent Appeal Process:
 - Must show deference to original decision makers when dealing with specialized expertise.
 - Ensure transparent standards for appointing adjudicators, and invest in training for them.

The Fair Access to Regulated Professions Act, 2006

- Passed into law in 2006.
- Purpose of FARPA:
 - To make registration practices in the regulated professions more transparent, objective, impartial and fair.
- Covers 13 professions (including law, chartered accounting, and professional engineering).

The Fair Access to Regulated Professions Act, 2006

1. Imposed general and specific duties on regulatory bodies in relation to their registration practices.

- **Qualifications**

- 10. (1) A regulated profession shall make information publicly available on what documentation of qualifications must accompany an application and what alternatives to the documentation may be acceptable to the regulated profession if an applicant cannot obtain the required documentation for reasons beyond his or her control. 2006, c. 31, s. 10 (1).

The Fair Access to Regulated Professions Act, 2006

2. Established a Fairness Commissioner to monitor and audit the regulated professions.

3. Created an Access Centre for Internationally Trained Professionals.

FARPA: Living up to the Thomson Commission Report?

- Elements of the Thomson Report incorporated into FARPA:
 - Emphasis on making the procedural aspects of the registration process more transparent, impartial, objective, and fair.
 - Created some support programs for applicants (Access Centre).

FARPA: Living up to the Thomson Commission Report?

- Elements added to FARPA that were not recommended in Thomson Report:
 - The creation of a Fairness Commissioner.

FARPA: Living up to the Thomson Commission Report?

- Elements recommended in Thomson Report not adopted in FARPA:
 - Independent Appeal Body.
 - Financial support for pilot tests of new models for fairer registration.
 - Level of support for applicants more limited than the Thomson recommendations.
 - Covers far fewer professions than the Report was aimed at.

Tchou-San-Da v. Association of Professional Engineers, 2007 BCSC 1403

Facts:

- Applicant had a degree in civil engineering, and Ph.D. in materials engineering, from former Soviet Union.
- Worked 18 years in Soviet Union as a civil engineer.
- Applied for license in B.C. and was told he must acquire 18 months of satisfactory North American experience. Three years later, the applicant re-applied.
- Registration committee deemed his experience unsatisfactory and required another 12 months of Canadian experience.

Tchou-San-Da v. Association of Professional Engineers, 2007 BCSC 1403

- One year later, applicant re-applied and was turned down again. This time he was required to gain nine months of satisfactory North American experience.
- Appealed decision and was denied by the Registration Committee on two separate occasions.
- Appealed that decision to the B.C. Supreme Court.

Tchou-San-Da v. Association of Professional Engineers, 2007 BCSC 1403

■ Issues:

- Was there an improper self-delegation of discretion?
- Was the decision to deny the license unreasonable?

Tchou-San-Da v. Association of Professional Engineers, 2007 BCSC 1403

■ Legislative Intent

- “It is apparent from a reading of the Act as a whole that the legislature has recognized that the respondent is the body in the best position to weigh the qualifications of those who would become professional engineers and geoscientists, and to discipline those who might require it. The Act permits the respondent to set the standards to be met by those wishing to gain admission to the Association, and thereby the privilege of practicing as a professional engineer in British Columbia.”(para.22)

Tchou-San-Da v. Association of Professional Engineers, 2007 BCSC 1403

■ Deference

- “As to the nature of the question in dispute, and bearing in mind it assumes the validity of the bylaw, I consider it to be a question of fact because it requires consideration of what experience should be required for membership in the Association. In my view, this factor calls for higher deference.”
(para.48)

Tchou-San-Da v. Association of Professional Engineers, 2007 BCSC 1403

■ Specify Requirements

- “Where, as here, the fault has been in the lack of definition of what experience is necessary, and the failure of the respondent to articulate the nature and extent of experience it requires in a bylaw, it is my view tha this matter should be remitted to the Association so that it can articulate its experience requirements in a by-law against which it can then apply the evidence provided by the petitioner.” (para. 55)

Tchou-San-Da v. Association of Professional Engineers, 2007 BCSC 1403

- Was the decision unreasonable?
 - “The petitioner asks that I declare that he has satisfied the requirements for full membership in the respondent Association. I am not prepared to do that. To do so would be to substitute my view of what is necessary for an applicant to become a professional engineer for the view of the Association charged with making such determination.” (para. 55)

Conclusion

- Procedural fairness is key
- Audit of Fairness Commissioner will be telling
- Deference to expertise of self regulated professions is entrenched