

SML

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Regulatory Potpourri: Interesting Updates in Professional Regulation

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Before we begin...

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Land Acknowledgment

- We acknowledge that the land our office is on is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg and the Chippewa, and is now home to many diverse First Nations, Inuit and Métis peoples. We also acknowledge that Toronto is covered by Treaty 13 with the Mississaugas of the Credit.
- We encourage you to acknowledge the land where you are located and to reflect on ways in which you can support the process of reconciliation.

Agenda

- **Investigations:**

- Latest direction from Divisional Court and HPARB on delay during investigations
- Best practices for ensuring that registration, investigation and discipline processes move forward in a timely manner

- **Self Represented Registrants:**

- How should regulators engage with self-represented registrants?
- What practices have regulators implemented to facilitate better access to complaints and discipline processes?
- What can you do to make sure self-represented registrants are treated fairly while still ensuring that processes move forward?



Considering Delay Arguments

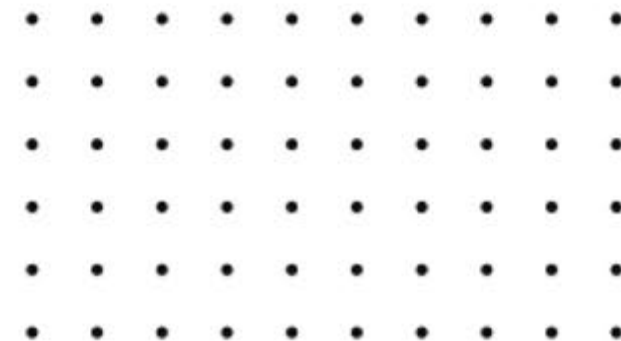
Where can delay arise?

- Complaints and investigations
- Discipline
- Registration
- Other processes?



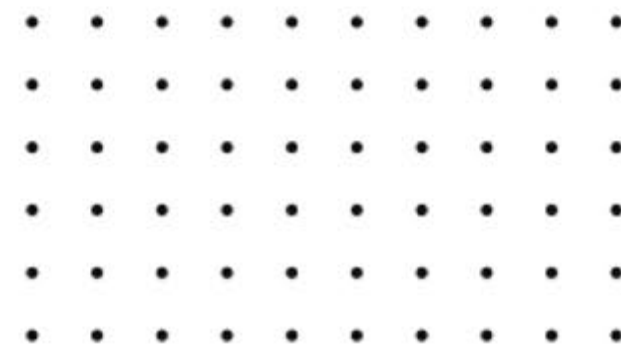
RS v. Ontario (Health Professions Appeal and Review Board)

- Delay can result in an investigation being set aside
- *CNO v Young (2022)*
 - Failed to take into consideration a 4-year delay during the investigation
 - Sent back to ICRC for reconsideration
- *RS v HPARB (2024)*
 - Psychologist ordered to complete remediation
 - Delay of 3 years was not inordinate
 - No evidence of significant prejudice



LSO v. AA

- AA applied for licensure in 2019.
- Good character investigation into evidence AA had sexually abused children in 2009
- Delay of four years
- Law Society Tribunal determined AA of good character
 - Imposed condition he not meet with minor children
- LST applied for a stay
- Court Granted Stay
 - Delay of only three weeks criticized, costs not ordered



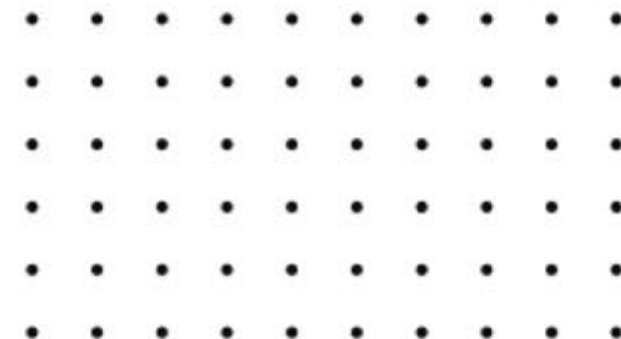
Applying *LSA v Abrametz*

- To be an abuse of process, delay must:
 1. Be inordinate; and
 2. Cause significant prejudice
- Lessons from case law:
 - ICRC must consider delay in determining appropriate outcome
 - The following can be considered:
 - Prioritizing high-risk cases
 - Receipt of additional complaints
 - Impact of COVID-19 on scheduling



Best Practices

- Follow internal process – track timelines, etc..
- Plan complex investigations ahead when possible
- Ensure there is communication with Registrant
 - Compassionate regulation
 - Building a record
- Ensure reasons address issues of delay when raised

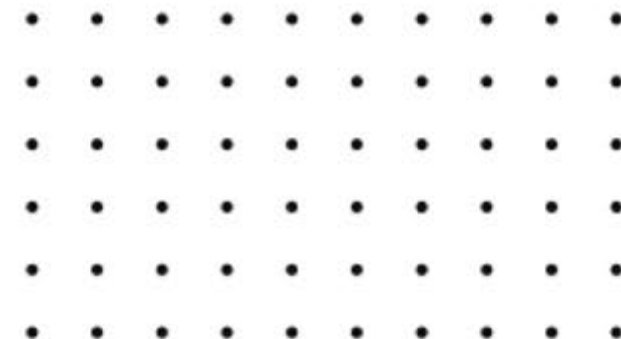




Self Represented Registrants – Challenges and Best Practices

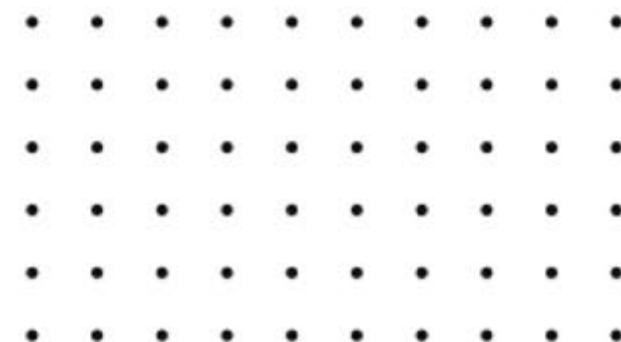
Understanding *Hirtle v CNO*

- It goes both ways...
 - Regulators have duty to provide assistance
 - Self-represented registrants have duty to learn process and prepare their case
- Assistance may include:
 - Information about discipline, complaints, etc. process
 - What to expect at a PHC or CMC
 - Opportunities to ask questions
 - Overview by hearing chair
 - Information from prosecutor and ILC about process as it unfolds



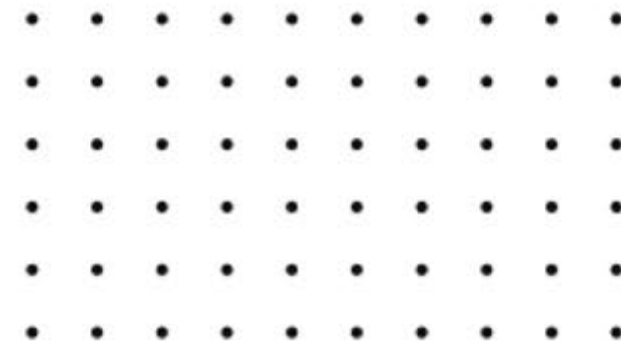
Guidelines for Self-Represented Registrants

- Applying *Hirtle* – providing a roadmap to the Discipline Process
- Not legal advice
- Guidelines include overview of the discipline process
 - Who the Participants are
 - Key Milestones along the way: Notice of Hearing, Disclosure, Pre Hearing Conferences, Hearings



Requests to Admit

- A party may request that the opposing party formally admit non-contentious facts or documents
 - Costs consequences for failing to make reasonable concessions
- Formal Request to Admit (“RTA”) process is different
 - Unresponsive party may be deemed to admit
 - Must be specifically included in the rules
- Is this a fair process with a self-represented registrant?



Requests to Admit

Request to admit fact or document

20.02 (1) In a proceeding, a party may, at any time but not later than thirty days before the hearing on the merits of the proceeding, request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document.

Form of request to admit

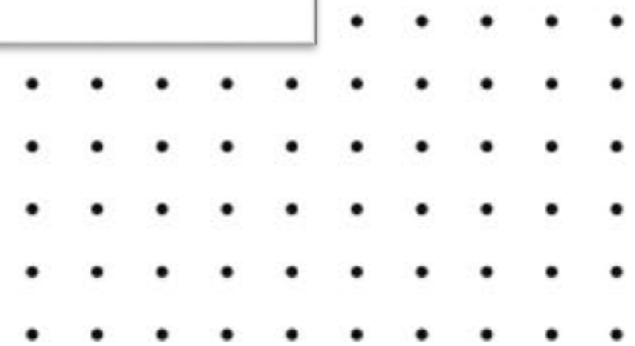
(2) A request to admit shall be in Form 20A.

Service of request to admit

- (3) A party making a request to admit to another party shall serve on that other party,
- (a) the request to admit; and
 - (b) a copy of any document mentioned in the request to admit, unless a copy is already in the possession of that other party.

Response to request to admit

20.03 (1) A party on whom a request to admit is served shall respond to it within twenty days after it is served by serving on the requesting party a response to the request to admit.



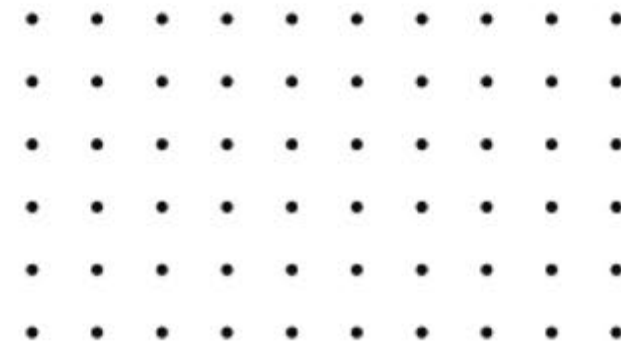
Khan v Law Society of Ontario

- Allegations that lawyer participated in mortgage fraud and misappropriated trust funds
 - LSO issued RTA
 - Lawyer was self-represented
 - Blanket denial
 - Deemed to admit
- Appeal Tribunal and Divisional Court upheld decision
 - Would this be the same in other professions?



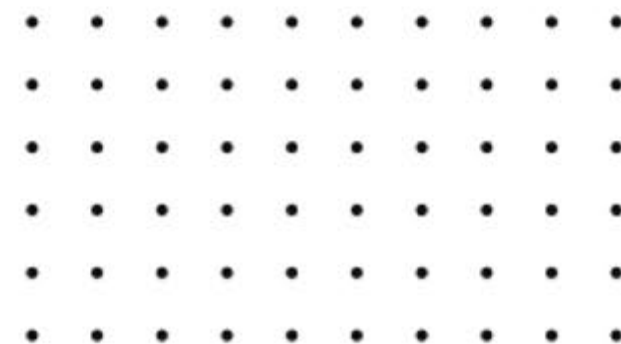
Re Debus, 2024 CIRO 65

- Canadian Investment Regulatory Organization
- Principles for self-represented registrants:
 - All participants are accountable for understanding and fulfilling their roles
 - Cannot leave a self-represented registrant to “flounder”
 - Responsibility to assist is not unlimited
 - Must remain neutral, fair and impartial



Magneson v Alberta Securities Commission, 2023 ABCA 348

- M was self-represented for part of the proceedings
- Failed to meet deadlines imposed by the Panel to provide further evidence.
- No infringement of M's right to procedural fairness
- *Sufficient assistance requires that an administrative tribunal provide some guidance to a self-represented litigant including information about the process, to help explain and clarify what is happening.*
- *A tribunal cannot provide legal advice or tell a litigant how they should run their case.*
- *Must remain neutral and unbiased*





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THANK YOU

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