




Local Experience Requirements: Bona Fide Requirements or Human Rights Violation?
Hon. Jean Augustine






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Local Experience Requirements: Bona Fide Requirements or Human Rights Violation?
Commissioner Barbara Hall

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What's Next?
Does the OHRC policy have implications for other kinds of licensing requirements?
Rebecca Durcan, Steinecke Maciura LeBlanc




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-Public protection mandate
-Accommodate applicants
-Registration Requirements

-Transparent
-Objective
-Impartial
-Fair practices

Human Rights Code overrides regulator's registration requirements

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• Demand for Canadian Work Experience becoming less prevalent

• Focus is on demonstrating requisite knowledge, skill and judgement through competencies as opposed to "soft skills"

Resume

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★ Human Rights Commission

★ Office of Fairness Commissioner

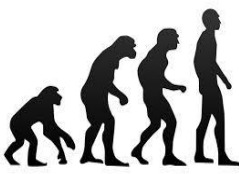
★ Case law

"I'm giving all of you a 'personal' pat on the back."

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Evolution of Registration Requirements

- College of Denturists of Ontario – Objective Structured Clinical Examination
- Transitional Council of College of Homeopaths of Ontario – assessment “that demonstrates that the applicant has the necessary competencies to safely practise the profession.” (s. 6(1) para 3 Ontario Regulation 18/14)



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- A requirement for Canadian experience may result in discrimination.
- Organization may establish a defence to prove that the policy is a legitimate standard
- *Meiorin* decision



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Organization or institution must establish on a balance of probabilities that the standard, factor, requirement or rule:

Adopted for a purpose or goal that is rationally connected to the function being performed

Adopted in good faith, in the belief that it is needed to fulfill the purpose or goal, and

Is reasonably necessary to accomplish its purpose or goal, because it is impossible to accommodate the claimant without undue hardship.

British Columbia (Public Service Employee Relations Commission) v. BCBGSEU [1999] 3 S.C.R. 3 (“Meiorin”)

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Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII)




- Registration requirement of one year of CWE
- Found to be discriminatory on basis of place of origin
- AHRC applied *Meiorin* and found discrimination could not be justified


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- APEGGA had failed to consider alternative methods of familiarizing international applicants with Canadian codes and practices
- Mentorship
- Practicum programs
- Training programs

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"...it cannot be in anyone's interest to continue to accept into this country some of the best and brightest individuals from around the world, and to then make it virtually impossible for them to use the skills that they bring with them."




Bitonti v. British Columbia (Ministry of Health) 1999 CarswellBC 3186, [1999] BCHTD #60

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Rivera v. College of Occupational Therapists of Ontario, 2011 CanLII 2704 (ON HPARB)

- Registration requirement (for currency) of 600 hours of supervised pre-approved practise
- Internationally trained applicant
- Applicant completed placement in Philippines – asked for it to be recognized by COTO
- COTO said no
 - Not pre-approved
 - Applicant not registered in Philippines
 - Scope of practice of OT narrower in Philippines





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Rivera v. College of Occupational Therapists of Ontario, 2011 CanLII 2704 (ON HPARB)

- Not a case of discrimination
- Rather a case of an applicant that does not have requisite KSJ
- Could put public health and welfare at risk

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401 Bay Street • Suite 2308 • Toronto, ON • M5H 2Y4 • CANADA
Toll Free (877) 498.1630 • Facsimile (416) 593.7867 • info@sml-law.com



**Local Experience Requirements:
Bona Fide Requirements or
Human Rights Violation?**


Allison Brownlee, Association of Professional
Engineers and Geoscientists of British Columbia

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**Case Study:
Engineering Profession in Canada**

- One-year of “Canadian Environment” work experience required for licensure
- Recognized as “key barrier” to licensure for newcomers to Canada
- APEGBC, supported by the BC Government, launched Canadian Environment Experience Requirement project in 2013

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Project Goal

- To define and articulate the expected outcomes of the requirement
- To identify potential alternatives that would allow these outcomes to be met without maintaining a strictly time-based one year work experience requirement

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Asking Regulators:

- What are the necessary competencies intended to be achieved by this requirement?
- Is working in a Canadian environment for one year really the only way these can be demonstrated?



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Bringing Together Stakeholders

- National Steering Committee
 - Provincial regulators
 - Engineers Canada
 - Immigrant serving agencies
 - Office of the Fairness Commissioner
- Stakeholder survey
 - Canadian and internationally-trained engineers (ITEs), employers, regulators



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Research and Background

- Examined:
 - Stakeholder feedback, including some ITE responses that suggested that more than one year should be required
 - The pros and cons of potential alternatives to the one year requirement
 - The legislative impacts of potential changes to the requirement



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Identifying Competencies

- Knowledge and application of Canadian codes and standards
- The expectations of a Professional Engineer within the regulatory framework, including the ability to apply the Code of Ethics
- Collaboration and peer review in engineering practice
- Effective communication skills in the engineering workplace



Identifying Alternative Metrics

- One or more of:
 - Competency-based assessment system
 - Orientation course or bridging program
 - Verified professional reference confirming local competencies have been demonstrated in practice
 - Completion of standardized practice exam



National Collaboration

- Engaged provincial admissions officials across Canada to develop position paper supporting a change and outlining alternatives
- Appraised proposed alternatives using sample cases of past applicants
- One year pilot planned for 2015



Challenges and Outcomes

- Shift in thinking:
 - From belief that 1 year requirement protects public to new understanding that requiring a demonstration of specific competencies = a more objective, robust and equitable requirement
 - Public interest best served through required proof of competency not tied to specific time frame; Fairness to applicant through expanded opportunities to prove competency



Contact Information

Allison Brownlee
Project Manager, Registration
Association of Professional Engineers and Geoscientists of British Columbia
Email: abrownlee@apeg.bc.ca
Website: www.apeg.bc.ca

AP Professional Engineers
EG and Geoscientists of BC
Founded in 1920, APEGBC is the regulatory and licensing body for the professions of engineering and geoscience in British Columbia. With over 29,000 members, APEGBC is one of the largest professional associations in BC.




Local experience: bona fide occupational requirement or human rights violation?

Jeff Wastney, Registrar
Registration Authority, New Zealand



Scene Setting

- Occupational regulation of Professional Engineers - Reviewed in 2002
- Political imperative - current competence
- Completed immediately after medical inquiry
 - Final report at:
<http://www.csi.org.nz/publications/TairawhitiHFAFinalReport.pdf>




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Dr Michael Bottrill

- Competence not current
- Sole practitioner
- Elderly - near retirement
- Practising in provincial location
- Poor CPD
- Misreading cervical smear tests
- Women died through his misdiagnosis




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Chartered Professional Engineers

- Chartered Professional Engineers Act 2002
- IPENZ as Registration Authority
 - IPENZ = Institution of Professional Engineers New Zealand
- New register of current competence
 - CPEng Register
- Assessments to enter and remain on register



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Implications

- IPENZ has full risk - no government money
- Requires rigorous assessments
- Register - only 'currently competent' eng'rs
- How to assess to get predictive validity?
- Must be competence-based
- Not rely on just exams or CPD
- Research required!

Research

- Engaged expert in professional competence
- What is current thinking in literature?
- What do other professions do?
- What is international current best practice?
- Visited professional engineering bodies
 - UK, Ireland, Australia, Hong Kong and South Africa

Findings

- Competence based - 'comprehend and apply'
- Require competence standard
 - For 'reasonable' Professional Engineer
- Need to use multiple assessment tools
 - Self-review, interactive assessment, CPD, referee inputs, work history
- "Actual performance is only determinant of competence" (i.e., evidence-based)

Competence Standard - Pt 1

- Technical skills (Elements 1-7)
1. Engineering Knowledge
 2. Knowledge of NZ-specific Good Practice
 3. Analyse and Investigate Problems
 4. Design or Develop Solutions to Problems
 5. Responsibility for Decisions
 6. Manage Engineering Activities
 7. Risk Management



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Competence Standard - Pt 2

- Generic "soft skills" (Elements 8-10)
8. Ethics
 9. Social/Cultural/Environmental Effects
 10. Communication
- "Holistic" competencies (Elements 11-12)
11. Maintaining Currency
 12. Judgement



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International obligations - TTMRA

- Trans-Tasman Mutual Recognition Agreement
 - TTMRA Act 1997
- Occupation-based
 - Not individuals
- TTMRA Principles
- Must register if ...
 - "Occupational equivalence" is established



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“Occupational equivalence”?

- Individual-based
 - New Zealand process aligned to an individual’s practice - not specific field (as in Queensland)
- How to test ‘New Zealand-specific good practice’?
- Must demonstrate ability to:
 - Comprehend and Apply knowledge of
 - ‘Good practice’ in New Zealand



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What is good evidence?

- Knowledge of New Zealand good practice
- Application of knowledge
 - Work samples
 - Self review
- If evidence is not New Zealand-based:
 - How is overseas practice different?
 - What would be done differently if work (in work samples) was done in New Zealand?



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Assessment tools?

- Preliminary evaluation - ‘desk top’ review
- Interactive assessment
- Written assignment
 - Case studies
 - Work simulation (to replicate real life situation)
 - Knowledge test
- Referee input
- Observation



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Decision outcomes

Within 30 days IPENZ must either:

- Register, or
- Decline registration, or
- Postpone decision (for up to 6 months), or
- Register with conditions
 - (this option not previously been used)



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Engineering Skill shortage in NZ

- Global shortage of competent engineers
- New Zealand competing for resource
- What are New Zealand’s real needs?
- Conflicting demands
 - Need engineers from overseas
 - Require current competence of ‘good practice’ in New Zealand
- ‘Occupational equivalence’ test works well



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Speaker Contact Information

- Jeff Wastney
- Registrar, IPENZ (Registration Authority)
- Email: Registrar@ipenz.org.nz
- Telephone
+64 4 474 8983 (DDI) or +64 21 479 858 (Mobile)






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