

A case study of Mihaly VS APEGA

Course Name:

**ENGG 513 The Role and Responsibilities of the
Professional Engineer in Society**

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Introduction

This report discusses about the Mr. Mihaly VS APEGA case based on Human Rights of employment law. Mr. Mihaly had complained to the Alberta Human Rights Tribunal on February 6, 2014 that the Association of Professional Engineers and Geoscientists of Alberta, which is APEGA, discriminated him in relation to his application to be registered as a professional engineer. The tribunal found that APEGA discriminated against Mr. Mihaly because of his place of origin by refusing to recognize his education as the equivalent of an engineering degree from an accredited Canadian University, and by asking him to write certain examinations to confirm his academic credentials. The Tribunal decided to award Mr. Mihaly \$10,000 in general damages and further ordered APEGA to reconsider Mr. Mihaly's application. However, APEGA disagreed on the decision of tribunal and appealed to Alberta Court of Queen's Bench.

This report aims to overview the Mihaly case and analyse it based on Human Rights.

Stakeholders

APEGA:

It is created in 1920. The Association of Professional Engineers and Geoscientists of Alberta (APEGA) regulates the practices of engineering and geoscience in Alberta on behalf of the Government of Alberta through the Engineering and Geoscience Professions Act.

It licensed legally for individuals and companies that intent to practise engineering and geoscience in Alberta. Applicants and companies earn the right to practise and use reserved titles and designations if they meet the requirement for ethical, professional, and technical competency.

The court of Queen's Bench:

The Court is constituted by the Court of Queen's Bench Act and conducts criminal matters, civil proceedings (including family and surrogate proceedings) and the judicial review of government and tribunal action in Alberta. It consists of a Chief Justice, an Associate Chief Justice, seventy-four Justices, a number of Supernumerary (half-time) Justices and Masters in Chambers. Specifically, legal Officers, Court Coordinators and Judicial, and other Assistants

form judicial staff members. Around hundreds of matters per month are dealt in eleven Judicial Centres and two Circuit Points throughout Alberta.

The Alberta Human Rights Commission:

The Alberta Human Rights Commission is established by The Alberta Human Rights Act to conduct functions under the act. It consists of two parts: the Minister of Justice and Solicitor General. The aim of Commission is to foster equality and to reduce discrimination. In order to fulfill this aim, it works through three ways, which are public education and community initiatives, the resolution and settlement of complaints of discrimination, and human rights tribunal and court hearings.

The Alberta Human Rights Act protects Albertans from discrimination in certain areas based on specified grounds. The purpose of the Alberta Human Rights Act is to ensure that all Albertans are offered an equal chance to live without discrimination.

Mr. Ladislav Mihaly:

Mr. Ladislav Mihaly was born and trained as an engineer in Czechoslovakia. He obtained a M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University in Bratislava in 1975 and a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague in 1981. After immigrating to Canada, he has sought accreditation as an engineer in Alberta, but APEGA said that he did not meet its requirements. He took a required examination but failed it twice. In 2008, he took his case to the Alberta Human Rights Commission.

National Professional Practice Exam:

The National Professional Practice Exam is held by APEGA to test the applicant within the knowledge of professionalism, law, and ethics. Candidates who pass the exam are qualified. Eleven engineering and geoscience self-regulatory organizations in Canada use the NPPE.

Canadian Human Rights Tribunal:

The Tribunal is similar to a court of law but is less formal and only hears cases relating to discrimination. On November 1, 2014, the Canadian Human Rights Tribunal is consolidated into a single organization, the Administrative Tribunals Support Service of Canada, by the

Government of Canada. However, this administrative change does not influence the mandate of the Canadian Human Rights Tribunal. Case matters will continue to be filed, managed and safeguarded in same procedures.

The Alberta court of appeal:

The Court of Appeal hears criminal appeals from the Provincial Court and both criminal and civil appeals from the Court of Queen's Bench. It also hears appeals from administrative and board tribunals. The Court of Appeal reviews the record to determine whether errors of law or fact were made in a decision rather than re-try the cases.

Background

Mr. Mihaly was born in former Czechoslovakia. He obtained a M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University in Bratislava in 1975 and a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague in 1981. After he immigrated to Canada in May 1999, Mr. Mihaly applied to APEGA for registration as a Professional Engineer. APEGA accepted his application and advised him that he was required to write the National Professional Practice Exam. He failed his first attempt at the NPPE on January 17, 2000. On August 1, 2000, Mr. Mihaly applied to write the NPPE for a second time. However, he did not attend on that day to write the test. On June 3, 2002, APEGA reactivated his file and advised Mr. Mihaly to rewrite the exam. Mr. Mihaly again took the NPPE exam but failed. On August 5, 2008 Mr. Mihaly complaint his case to the Alberta Human Rights Commission that APEGA discriminated against him based on his place of origin when it denied him registration as a professional engineer.

On February 6, 2014, the Tribunal found that "Mr. Mihaly has succeeded in establishing that the Examination Standard and the Experience Standard used by [APEGA] to assess his educational credentials, without more individualized assessment or exploration of other options, constitutes discrimination which cannot be justified under the [Alberta Human Rights Act]."[1]. The Tribunal awarded Mr. Mihaly \$10,000 in general damages. The Tribunal further ordered APEGA to reconsider Mr. Mihaly's application.

The conclusion of Court of Queen's bench is that "the decision of the Tribunal should be reversed. There is no need, in the circumstance, to remit this matter back to the Tribunal." [2]

The conclusion of the Alberta Court of appeal is that “the appellant has not met the test for restoration of this appeal, and the application is dismissed.”[3]

The Court of Queen’s Bench Decision

The Honourable Madam Justice J.M. Ross of the Court of Queen’s Bench came to the conclusion to reverse the decision of the Alberta Human Rights Tribunal. The Tribunal found that APEGA had discriminated against Mr. Mihaly under the provision of AHRA, s4. [4]

APEGA appeal was based on four issues.

The first issue was Procedural Fairness, where APEGA raised the appeal that the Tributer did not hear all the point in law [1] that APEGA had raised. In order to support this argument, they referred to **Amacon Property Management Services Inc. v Dutt** [5]. But Madam J.M. Ross concluded that APEGA “...has not established a breach of the rules...” [6]. She supported her decision by referring to **Pope & Talbot Ltd v British Columbia** [7] where it was stated that although it would be advised that the Tributer look at all the point of law that the parties present, it is not an obligation.

The second issue presented by APEGA was Jurisdiction, where they claimed that the Tributer had no jurisdiction over Mr. Mihaly’s complaint since “...AHRA does not protect against discrimination based upon the “place of origin...” [8] and to support their argument they included the case of **Grover vs Alberta** [9]. Madam J.M. Ross concluded that APEGA had “...not established that the Tribunal lacked jurisdiction.” [10]. She argued her decision, stating that in the Grover case, she had come to Canada when she was two and obtained her PhD in Toronto and thus there was no connection between where she was born and where she received her doctorate. In Mr. Mihaly’s case, he was born and received his Bachelor’s and Master’s in a foreign country, thus the “place of origin” discrimination was a valid point.

The third issue which was bases for APEGA’s appeal was the Prima facie Discrimination. APEGA questioned the Tributer’s legal test for determining discrimination [11]. Madam J.M. Rose agreed with APEGA’s claim and said that there was no evidence to support the claim of discrimination. She disagreed with Tribunal’s findings that “engineers with qualifications from foreign countries with which [APEGA] has no MRAs, have qualifications which are not at par with Canadian engineering accreditation standards” [12]. She states that APEGA didn’t assume the level of any candidate, it just bases them on whether the Universities are accredited or not, and whether their curriculum is compatible with APEGA’s standards. In

the event that there is not enough information or collaboration from the foreign facilities, then the candidate is appointed several examinations in order to assess their competence. But the main issue was whether the place of origin of Mr. Mihaly was the reason for the required FE examinations. Madam J.M. Rose concluded since the FE Exam is required of all candidates with foreign experience and schooling with not the same curriculum as Canadian schools, it does not constitute discrimination specific to Mr. Mihaly place of origin, but an APEGA requirement for all. Also, she noted that “The Tribunal failed to apply the Moore test in relation to the NPPE...” which all applicants have to pass, foreign or Canadian. Based on these reasonings, Madam J.M. Rose agreed with APEGA.

The fourth issue APEGA raised for appeal was the fact that APEGA should have done more to accommodate Mr. Mihaly. One of the reasons was the findings of the Tribunal that the FE Exams were unreasonable due to standardization [13] based on the Meiorin case. The FE Exams were different than the Meiorin case as they have an 85-percentage passing rate in international applicants, with the possibility to retake the exam. Also, these exams were designed in order to properly outline the level the international candidate possesses, with the first part testing material a Canadian graduate would have covered the 1st and 2nd year, and the second part, 3rd and 4th year.

It was under these findings that Madam J.M. Rose came to the conclusion to reverse the decision of the Tribunal.

Reflection and Opinion

For this issue, we agree with the Court of Queens Branch. The reason behind our approval with the decision of Madam J.M. is due to the fact that there needs to be a bases for everyone to follow as standard in order for a functional society, where the main concern is the well-being of the people. Some of the issues that arose with these trials were taking of tests and the dispute of professional career. The one year Canadian experience is needed in order for the engineer-in-training to be familiar with codes and good practices. An example of such would be snow load in designing a building. The building is designed for both ultimate and serviceability strength, and the snow load is based on computational results and Canadian weather, the factor for the factored load could be different based on different provinces let alone different countries. APEGA should definitely accommodate foreign engineers and geoscientists, and they do. The dispute with Mr. Mihaly was on the FE exam and NEE test. These tests were made in order to get an understanding of the level a candidate is at with their

qualifications. In order to facilitate a safe society, there are certain rules we all have to abide to.

Ideally, it would be perfect if all the universities in the World had the same curriculum and the same accreditation. This would diminish any disputes between these issues. An example of such is the North American Free Trade Agreement for architects, which states that any architect that comes from Canada, US or Mexico can work in either country as their credentials are recognized. Now, it is understandable that there are limitations on what those rules adhere to as each province and territory has different building codes (based on the main building code) let alone countries. But there could be a common consensus between foreign countries and Canada, we could call it the Unified Engineers of the World. But since there are insufficient funds to accommodate such utopian scenario, rules have to be taken in place in order to make sure the professional engineers in Alberta are qualified and capable. APEGA already has certain regulations in place like MRA, which includes all the schools with the same accreditation as a Canadian school, and for those schools that don't fall under that category APEGA has the CEAB Substantially Equivalent Program. It is with these reasoning that we agree with the decision of the Court of Queen's Branch.

References:

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