

ENGG 513

Mihaly vs. APEGA

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Introduction

This report will focus on the Mihaly vs APEGA court case and any pertinent details surrounding it. We will look at Mihaly's history as an engineer and the situation he faced in Canada as a foreign-trained worker seeking entry into Alberta's regulating body for Engineering and Geoscience. We will examine several stakeholders in the case including the reasons they may have a stake and their background. The court's decision against the Human Rights Commission (HRC) will be both described and examined in the context of the case and in the context of the original HRC decision. A brief reflection on the topic will be provided, including any relevant topics that may pertain to the case details or determining factors for decisions.

Brief Overview

Mr. Mihaly is a Czech engineer who obtained a Master's degree in Fuel Technology and Thermal Energy from the Slovak Technical University as well as a Corrosion Engineering certification from the Institute of Chemical Technology. Mr. Mihaly immigrated to Canada in the late 90's in order to work as an engineer, but refused on several occasions to take extra courses and technical exams^[1], also failing the APEGA ethics exam thrice^[2]. Mr. Mihaly eventually filed a formal complaint for discrimination with the Human Rights Commission, who sided with him and ordered APEGA to repay damages and provide other assistance. The decision was appealed by APEGA and was eventually overturned for various reasons, including logical inconsistency in the plaintiff's arguments and lack of evidence.

Stakeholders

There are multiple stakeholders in the case, be they organizations or individuals. Stakeholders are those to whom the case will have a direct or indirect impact as a result of the decision or outcome of the case.

APEGA

APEGA is the governing body for both Engineers and Geoscientists in Alberta. They control regulation of both the title and the practice of engineering and geoscience, and are the defending party in the case. APEGA was created in order to assure that only qualified persons would practice or use the title of P.Eng or Geoscientist. This control over who may or may not practice either of the two professions allows a high standard to be set for engineers and geoscientists in Alberta ensures both public safety and liability needs are met in the profession.

The Court of Queen's Bench

The Queen's Bench is the superior trial court for the province of Alberta. The Bench hears civil and criminal matters and appeals regarding the provincial court as well as family and commercial law cases^[3]. The Bench is the court that handled the appeal of the case from APEGA after the Human Rights Commission's decision. The Queen's Bench is in place as a body built to restrain actions that are found to be illegal or unlawful by public authorities, among which is APEGA.

The Alberta Human Rights Commission

The AHRC, herein referred to as the HRC or Human Rights Commission, is the body that protects Albertans from discrimination in certain domains, including in professional fields^[4]. The mandate of

the HRC is to promote equality and reduce discrimination based on gender, origin, language and culture among other aspects. Anyone may file a formal complaint with the HRC if the issue falls under their jurisdiction.

Mr. Ladislav Mihaly

Mr. Mihaly is the primary plaintiff in the case against APEGA. Mihaly first deposited a complaint with the Human Rights Commission, who sided with him and imposed reparations on APEGA only to have the decision reversed by the Queen's Bench. Mr. Mihaly is originally from Czechoslovakia and immigrated to Canada in the late 90's to work as an engineer, only to find his degrees and experience did not qualify him for the title of professional engineer in Alberta without examination.

The Public

The public is a stakeholder in this case because of the implications of the case. Public welfare depends on the quality of the engineers behind public projects, and as of such depends indirectly on the admission standards of ruling bodies such as APEGA. Were APEGA to lower the bar for entry as a result of this case, the public may be obligated to accept a lower overall safety level due to increased risk related to the quality of engineering work.

Moosa Jiwaji

As an adjudicator for the Human Rights Commission, Jiwaji's decision on the matter of Mihaly vs. APEGA could have a direct impact on his own reputation as an individual in the practice of law. This is especially true given that he had sided with Mr. Mihaly and ordered APEGA to pay 10,000\$ in damages among other things, only to have his decision reversed by the Queen's Bench. In fact, Mr. Jiwaji was terminated as a result of the heavy-handed decision against APEGA^[5] and other unrelated reasons.

Madam Justice J.M. Ross

Justice J.M. Ross was the judge in question representing the Queen's Bench during APEGA's case appeal in the Alberta Court of Appeal. As with Mr. Jiwaji, the Justice's reputation relies on good and ethical decision making. The Justice's decision in reversing the Tribunal's final verdict was made to uphold the standards of Canadian engineering and to uphold the public's interest in safety.

Background

As previously mentioned, Mr. Mihaly began his career as an engineer by training in Czechoslovakia in the 1970's in both Fuel Technology and Corrosion Engineering from two separate schools. After working roughly 12 years in both the industry and as a professor, Mihaly immigrated to Canada. His application for registration as a professional engineer with APEGA started in 1999, at which point he was told that it would be necessary to provide his transcripts and write the National Professional Practice Exam (NPPE). In early 2000, Mr Mihaly was advised that he had failed his first attempt at the NPPE and would also be required to complete both a course and examination in Engineering

Economics and a set of three technical exams to confirm his abilities. Mr Mihaly did not attend his second attempt at the NPPE that was scheduled for October.

The following June of 2001, APEGA indicated they withdrew Mihaly's application as a result of his failure to write any of the required examinations before the provided deadline.

In May of 2002, Mihaly requested his application be reopened, which was accepted by APEGA. He once again attempted the NPPE in July of 2002, failing for a second time. In June APEGA once again reactivated his application and informed him he was to write the NPPE and three confirmatory exams by May 2003, which he did not do. He also failed the NPPE for the third time in January of 2003.

Late 2006, Mr Mihaly requested his file be reopened a third time, which APEGA accepted with the additional requirements that Mihaly provide an updated resume and references. This information was provided to APEGA in November of 2006.

In 2007 the APEGA Board of Examiners once again confirmed that three confirmatory exams plus a course or examination in Engineering Economics was necessary for licensing. The board also determined that the experience that Mihaly had acquired for the past year under another engineer did not qualify as acceptable D-level experience.

Mr. Mihaly did not write any of the required exams and filed a complaint with the HRC in August of 2008. This complaint, posed against APEGA, was based on discrimination against himself by the Association formed around his place of origin.

The Tribunal found that the Mihaly had established the exams as a form of discrimination as it lacked any individualized assessment. Mihaly was awarded 10,000\$ and APEGA was ordered to provide him with a mentor and individualized assessment. This decision was simultaneously placed under appeal by APEGA and under cross-appeal by Mihaly.

Ultimately the decision was overturned by the Queen's Bench as, despite the fact that Mihaly had indeed established *prima facie* discrimination, APEGA's means were justified given the circumstances and the risks involved^[6, para. 150].

The Court of the Queen's Bench Decision

The Queen's Bench's ultimate decision was to revert the decision of the Human Rights Commission. This happened for a multitude of reasons. The Justice noted that the Tribunal applied a correct legal test of justification in order to decide whether or not Mihaly had grounds to a case for discrimination. The issue that was debated was whether or not Mihaly was properly accommodated by APEGA, properly being equivalent to reasonably in this particular case.

It is noted that the Tribunal critiqued the process that allows engineering programs to be created and accredited, which places them on the FD list. The fact that Mr. Mihaly's program was on the FD list already gave him an advantage, that is having to write three exams rather than a full nine^[7]. It was noted as well that the Tribunal's suggestion that APEGA negotiate with international institutes was unreasonable due to the large amount of resources required to do so. Along the same lines, it is noted

that the FD list contains thousands of programs and that much effort has already been made to accommodate foreign-trained engineers.

APEGA's policy of using confirmatory exams was in line with the objective of ensuring competency of applicants. The Tribunal took issue to the exams due to the fact that they are standardized and do not take into account the individual or specialized skills. However, the Tribunal assumed that the exams would have an overbearing effect on foreign graduates, where evidence suggested that the opposite was true, with an 85% pass rate^[6, para. 128]. It is unknown if Mihaly would pass any of the exams as he never did sit down to write them.

The Justice noted that foreign graduates are in fact expected to possess the skills and education that are the basis of their profession, as demonstrated by the high pass rate of the FE exams. This demonstrated that most foreign graduates were in fact on par with graduates of accredited programs.

The defense noted that standardized testing was often important in assuring quality of candidates for a profession; notable examples included language proficiency in the profession of audiology and speech language pathology. The conclusion to this argument was that standardized testing was in fact reasonable.

APEGA does in fact conduct some individualized assessment. It was found that Mihaly did have more than the 10 years of experience required, but that the experience was of subpar quality for admission. This countered the argument of the plaintiffs that APEGA could have individually assessed Mr Mihaly for competence; they did in fact do so.

In addition to all this, the court found that the directives ordered by the Human Rights Commission went beyond the scope of any discrimination. Directives such as pairing Mihaly with a mentor and allowing him to network with other foreign engineers facing similar issues was in fact not in direct relation to the complaint about discrimination.

The final conclusion is that the Tribunal's reasoning for their conclusions (that APEGA could have accommodated Mihaly further) are sprinkled with logical errors. The Tribunal's arguments were not supported by strong evidence and they failed to account for relevant considerations for the circumstance. Mr Mihaly failed to demonstrate any of the basic competencies of a graduate engineer by failing the NPTE three times and not once attempting the technical exams.

Reflection and Opinion

The Mihaly case is a very interesting one. There are several important arguments being made, including individuality, a possible lack of effort to standardize educational requirements, and reasonable accommodation.

Must individuals be assessed with standardized testing or with individual testing based on skills and competencies already acquired? There is no straightforward answer to this question; on one hand a chemical engineer and an electrical engineer do not share the same technical competencies, but on the other hand all chemical engineers ought to share the same competencies as each other, regardless of the institution that has instructed them. So, while one engineer may have studied in China and one may

have studied in Germany, given that they both receive a high quality education they should both be able to pass the same competency exam, as the topics required to be a certain variety of engineer do not vary with region of study but instead the quality of education. These two should both be able to pass an equivalency exam here in Canada – yet if one does not receive a high quality education, one may not pass. For this reason the standardized test is implemented as a simple sorting mechanism for educational institutes (ignoring the fact that some are accredited).

Next there is the issue pertaining to the quality of institutions worldwide, and the Tribunal's suggestion that an effort should be made to standardize education. While it is a noble idea, it would take an international governing body to implement this, along with an appropriate amount of resources to do so. However they also argued for individual assessment for those who could not pass a standardized test, which effectively is an argument against themselves. It's noted that APEGA does in fact individually assess individuals like Mihaly, who did not possess the qualifications to simply bypass examination. It seems to me akin to someone who has never driven saying "people should stop their cars at red lights" when in fact the vast majority of drivers do. This much the same as how the HRC does not have a strong precedent of dealing with the APEGA admissions process.

Where reasonable accommodation is concerned, I believe Mihaly was in fact accommodated in a reasonable fashion. In fact, he was accommodated more than I believe is reasonable. He failed the NPTE three times, and did not show up to it on one occasion. He did not attempt any of the technical exams either, which is unreasonable on his part given that he was allowed four different chances to take the exams. This is especially true given that he was only to be administered three exams rather than a full nine exams, which is the case for programs not on the FD list. To anyone looking in from the outside, that may reflect an engineer who is not confident in his education or capabilities trying to bypass the system that is put in place to keep the public safe.

Given the points above, it is hard for me to find any way to disagree with the Queen's Bench decision on the matter. Mihaly was given individual assessment and found he needed examination, and he was not able to pass an ethics exam nor did he attempt any of the technical exams required for licensing.

On the topic of foreign accommodation, yes, APEGA should accommodate foreign-trained engineers and geoscientists. In fact, they already do, as was noted in several places above. APEGA individually assesses experience for individuals with more than 10 years of field experience, or simply administers checks in the form of technical and ethical examinations. These are necessary to uphold a high standard for Canadian engineers.

One possible improvement that may make life easier for foreign-trained engineers (including those who leave Canada to study elsewhere) would be to accredit programs in major universities worldwide fully, rather than simply cutting down the number of examinations required. This is already the case in several places, but any Canadian Associations should seek to accredit more universities whose programs satisfy the requirements of Canadian engineering associations.

References

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