



ENGG 513

Mr. Ladislav Mihaly vs. The Association of Professional Engineers and Geoscientists of Alberta (APEGA)

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TABLE OF CONTENTS

1.1 INTRODUCTION	3
2.1 STAKEHOLDERS	3
2.1.1 THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF ALBERTA (APEGA)	3
2.1.2 THE COURT OF QUEEN'S BENCH	3
2.1.3 THE ALBERTA HUMAN RIGHTS COMMISSION.....	4
2.1.4 MR. LADISLAV MIHALY	4
2.1.5 OTHER PROVINCIAL REGULATORY BODIES	4
2.1.6 PUBLIC CITIZENS	4
2.1.7 OTHER INTERNATIONAL APPLICANTS	5
2.2 BACKGROUND	5
2.3 THE COURT OF QUEEN'S BENCH DECISION.....	6
3.1 OPINIONS AND REFLECTION	8
REFERENCES:.....	10

1.1 INTRODUCTION

This report discusses the Human Rights Tribunal of Mr. Ladislav Mihaly vs. The Association of Professional Engineers and Geoscientists of Alberta (APEGA), and the resulting appeal to the Court of Queen's Bench of Alberta against the Tribunal's decision. The case primarily deals with the challenges that arise from international applicants hoping to register as a Professional Engineer in Alberta, and the requirement for APEGA to provide "reasonable accommodation". Mr. Mihaly filed a complaint with the Human Rights Commission on August 5th, 2008 alleging that he was discriminated against by APEGA when he was denied registration as a professional engineer [1]. This complaint addressed whether or not the requirements outlined by APEGA for Mr. Mihaly to register as a professional engineer contradicted the Alberta Human Rights Act [2]. On February 6th, 2014, the Tribunal found that Mr. Mihaly was able to establish that the examination standard, and experience standard used by APEGA to examine his education credentials without further assessment was discriminatory under the AHRA [3]. Sections 2.1 - 2.2 will examine the stakeholders involved in the case, and provide a brief summary of the processes and events that occurred. Section 2.3 describes and discusses in detail the Court of Queen's Bench of Alberta's decision on the appeal by APEGA. Mr. Mihaly attempted to appeal the Court of Queen's Bench of Alberta's decision with the Alberta Court of Appeal, however this case was dropped in June 2016. Section 3.1 addresses the opinions and perspectives of the report writers, Craig Locking and Laura Fader, regarding the decisions of Courts/Commissions and the idea of reasonable accommodation.

In essence, the role of APEGA to determine the competence of individuals applying for their designation of Professional Engineer will be discussed. The method in which this regulator body examines applications and formulates agreements with international organizations will also be explored. These existing regulations and responsibilities will be compared against how Mr. Mihaly's case was handled in regards to discrimination.

2.1 STAKEHOLDERS

2.1.1 THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF ALBERTA (APEGA)

One of the key stakeholders associated with the issue raised by Mr. Mihaly's case is the regulatory body APEGA. APEGA's role is to regulate the practices of professional engineering and geoscience in Alberta. This directly serves the public interest as individuals wishing to practice engineering or geoscience must first prove their competency. Considering the disasters that may arise from an incompetent individual performing engineering work, it is crucial that the standards that APEGA uses to assess applicants align with those set forth by the *Engineering and Geoscience Professions Act* and *Engineering and Geoscience Professions Regulation*. While APEGA is required to reasonably accommodate applicants with complex backgrounds, they must still work within this framework to protect the citizens of Canada through standardized measures and international mutual agreements.

2.1.2 THE COURT OF QUEEN'S BENCH

Another stakeholder involved in Mr. Mihaly's case is the Court of Queen's Bench of Alberta (ABQB). The ABQB is the superior court in the province of Alberta, and conducts criminal matters, civil proceedings, and judicial review of government and tribunal action. An appeal was submitted to the

ABQB by APEGA against the decision of the Alberta Human Rights Tribunal, thus involving the ABQB in the case. It was very important how the ABQB dealt with this case as the verdict could have significant repercussions on APEGA's (and other provincial regulatory bodies) application process, and could potentially endanger the general public by allowing unqualified individuals to practice professional engineering.

2.1.3 THE ALBERTA HUMAN RIGHTS COMMISSION

The Alberta Human Rights Commission was established under the Alberta Human Rights Act and is a quasi-judicial human rights body. Its purpose is to foster equality and reduce discrimination through public education, community initiatives, resolution and settlement of complaints, and through human rights tribunal and court hearings. Mr. Mihaly had submitted a complaint to this commission on the basis that APEGA had discriminated against him due to his place of origin, and would not register him as a professional engineer. The decision made by the commission following the tribunal was incredibly controversial, and was eventually appealed by APEGA to the Court of Queen's Bench. Discrimination is an incredibly serious issue, and the decision made by the Alberta Human Rights Commission had large potential to impact other similar cases, as well as the public's perception of how APEGA manages individuals applying to receive their designation.

2.1.4 MR. LADISLAV MIHALY

Mr. Ladislav Mihaly was, for obvious reasons, a major stakeholder in this case. Mr. Mihaly was born and educated in former Czechoslovakia, where he received a M.Sc. Diploma from Slovak Technical University in Bratislava and a Corrosion Engineering Certificate from the Institute of Chemical Technology in Prague. Mr. Mihaly also had a significant amount of experience with piping design and fabrication; however, though he had lengthy experience in this field his role never increased in responsibility or complexity. Upon immigrating to Canada, he applied to APEGA to register as a professional engineer. After failing to pass or write the required examinations from APEGA to prove his competency, he issued a complaint to the Alberta Human Rights Commission stating that APEGA had discriminated against him, thus beginning the case of Mr. Ladislav Mihaly vs. APEGA. Mr. Ladislav reactivated his applications and spoke to APEGA several times regarding his qualifications, but ultimately could not meet the established standards.

2.1.5 OTHER PROVINCIAL REGULATORY BODIES

APEGA had a large responsibility when handling the discrimination accusations, as other regulatory engineering provincial organizations were observing the results of the ruling. If Mr. Mihaly was able to allege prima facie discrimination of taking required examinations, there is a potential for applicants in similar situations across Canada to launch appeals against their respective regulatory bodies. Had APEGA acted differently and not appealed the decision against the Tribunal, this would set a different precedent for similar cases, and discount the regulatory process and the public perception of engineering.

2.1.6 PUBLIC CITIZENS

The public has placed trust in APEGA with its regulation of the engineering profession. Regulatory measures, and the need to prove competency of foreign applicants, guarantees that, without

exception, anyone considered a professional engineer meets and exceeds all of the requirements. This is of great importance as the work of a professional engineer, in many cases, has a significant impact on public safety. The public's perception of discrimination during the Alberta Human Rights Commission appeal is a very serious matter, as they might question other responsibilities of APEGA. As this case was broadcasted in the media, the various decisions by the Courts and Commissions were directly communicated to the public.

2.1.7 OTHER INTERNATIONAL APPLICANTS

The verdicts and appeals have a large impact on other international applicants that are also subject to the application process to become a professional engineer with APEGA. Had the ruling of the tribunal not been reversed, APEGA would have been required to follow through with the tribunal's suggestions to appoint committees and provide individualized assessments and examinations to foreign applicants. This may have made it easier for foreign applicants to obtain registration, but would've caused undue hardship on APEGA and fundamentally altered its standards.

2.2 BACKGROUND

After immigrating to Canada after studying in Bratislava and Prague. In May 1999, Mr. Mihaly applied to become a professional engineer in Alberta with APEGA. APEGA reviewed and acknowledged Mr. Mihaly's application and advised that Mr. Mihaly was required to write the National Professional Practice Exam (NPPE) and three additional confirmatory exams (or an engineering economics equivalent). Mr. Mihaly failed his first attempt, and did not appear for his second. His application was withdrawn for not meeting the timeline [1].

Mr. Mihaly's case was reactivated on May 31, 2002. After email and phone correspondence regarding his qualifications, Mr. Mihaly was given the opportunity to file an appeal if he wished. Mr. Mihaly did not appeal, failed the exam, and had the application withdrawn when the requirements were not completed in time.

On October 3rd 2006, Mr. Mihaly's application was reactivated for a third time, and APEGA requested updated information of references and a resume given the length of time between the two applications. APEGA examined the information and confirmed that Mr. Mihaly had to write three confirmatory examinations, and complete an equivalent course of engineering economics. In addition he was required to gain one year of North American D level experience. Mr. Mihaly did not write these examinations, and on August 5th 2008 he filed a complaint with the Alberta Human Rights Commission, alleging that he was discriminated against by APEGA when he was denied registration as a professional engineer.

The Human Rights Commission held a hearing to review Mr. Mihaly's evidence and determine if the standards and processes in which APEGA used to assess his credentials constituted discrimination. Mr. Mihaly's complaint was filed under sections 4, 7, and 9 of the Alberta Human Rights Act (AHRA). Section 4 prohibits discrimination in goods, services, and accommodation that is customarily available to the public, while section 7 addresses discrimination in employment practices. Section 9 addresses exclusion and discrimination in trade unions, employers' organizations, and occupational

associations in which membership is a prerequisite to working in a particular profession/occupation. The commission argued that Mr. Mihaly was not in any type of employer/employee relationship with APEGA, therefore the hearing proceeded under sections 4 and 9 [1].

The tribunal analyzed the evidence presented by Mr. Mihaly and APEGA, and on February 6th, 2014 the tribunal found that Mr. Mihaly was successful in establishing that the examination and experience standard used by APEGA constituted discrimination that could not be justified by the AHRA. Regarding the examination standard, the tribunal stated that there is little evidence to support that APEGA has investigated alternative approaches that took into consideration individual testing of Internationally Educated Graduates (IEGs) against a standard that is more sensitive to the IEGs background and foreign education. Similarly, the tribunal also stated that there was very little evidence to support that APEGA had explored alternatives to its requirement of one year minimum experience practicing engineering in Canada. This requirement is in place to familiarize foreign applicants with Canadian codes and practices; however, the tribunal argued that IEGs could achieve sufficient knowledge of these areas through other options such as mentors or training programs. For compensation, the tribunal awarded \$10,000 to Mr. Mihaly for general damages and ordered APEGA to reconsider his application, including provisions requiring APEGA to appoint a committee to assess and apply individual assessment options [1].

On November 20th, 2014 APEGA filed an appeal to the Court of Queen's Bench of Alberta against the tribunal's decision, and the appeal hearing proceeded on July 23 and 24, 2015. The Court found that the tribunal had arrived at incorrect conclusions, misinterpreted the *Engineering and Geoscience Professions Regulation*, and suggested actions that were far beyond any interpretation of reasonable accommodation. The issues, evidence, and justification presented by APEGA to the Court are detailed in section 2.3.

Mr. Mihaly filed an appeal after this decision, however this was dropped in June 2016 when there was failure to follow up. Mr. Mihaly applied in December 2016 to restore his appeal, which was dismissed with the following comments: ""Even Canadian educational institutions must demonstrate the equivalency of their programs, and Canadians who receive foreign training must also demonstrate equivalency. [4]

2.3 THE COURT OF QUEEN'S BENCH DECISION

Engineering programs in Canada require in depth evaluation by the CEAB to assess the curriculum, faculty and facilities. This in person, quality assurance check, ensures that every single graduate of the program meets all of the requirements governed by APEGA.

Canada and other countries around the world have Mutual Recognition Agreements. The Canadian Engineering Accreditation Board (CEAB) determines whether or not the accreditation process is equivalent to the Canadian Process. If a program is a part of an MRA, graduates are generally not assigned examinations by APEGA [3]. Mr. Mihaly received his training in the former Czechslovakia, currently Slovakia and Canada has no MRA's and Slovakia has not applied to go through this process. Particular programs at institutions may be reviewed by the CEAB by request, if accepted as a

Substantially Equivalent Program, graduates will usually not have to complete the examinations by APEGA.

If an engineering program has not been recognized under a MRA as a Substantially Equivalent Program the program may be included on a Foreign Degree List (FD List). If an individual has graduated from a program on this list, they are typically assigned the FE exam, or three confirmatory examinations. As of 2016, the preference of APEGA is to use the FE exam which is set by the National Council of Engineering Examiners and Surveyors in the US [3]. If an applicant has completed a Master's degree at an MRA, or has ten years or more of acceptable work experience.

According to the FD list Mr. Mihaly's Master's Degree was equivalent to a Bachelor's degree in Chemical Engineering. In addition to assessing the degree itself, Mr. Mihaly's experience was examined and it was determined that despite his long-term experience, his duties had not increased in responsibility or complexity, therefore his examinations could not be waived. Mr. Mihaly had taken issue to this assessment of his credentials, but did not present evidence to demonstrate the assessment was incorrect.

These factors were considered when the Court of Queen's Bench examined the issue raised by APEGA that the tribunal was unreasonable when it decided that APEGA's requirements were not justified. The issue was not that the tribunal had applied the correct legal test of justification, but rather with the tribunal's finding that APEGA did not reasonably accommodate Mr. Mihaly. The tribunal had suggested that APEGA should discuss and negotiate agreements with foreign institutions from which engineers graduate and come to Canada; however, it is not expected that APEGA has the resources or ability to do this. With several thousand engineering programs on the FD list, and with the evidence that accreditation or assessing equivalence involves complex procedures requiring cooperation and significant investments of time and resources, this endeavor is well beyond the capacity of APEGA and most professional regulatory bodies thus exceeding the limits of "reasonable accommodation".

Additionally, the Court disagreed with the tribunal's finding that the FE exam was unreasonable. The Court argued that the tribunal's issue with the FE exam was essentially based on the fact that it is standardized. If the test did have a disproportionate impact on foreign educated applicants, as suggested by the tribunal, it would not have an 85% pass rate. The FE exam and confirmatory exams were developed to assure the competency of professional engineers, and thus, public safety. By taking and passing the exams the internationally educated graduates demonstrate that their education is at par with a Canadian graduate and possess the knowledge that is the basis of their profession. The tribunal also had contemplated that Mr. Mihaly be granted the option to challenge specific examinations in areas he was not exempted; however, the tribunal failed to consider the fact that Mr. Mihaly did not even attempt to take either the three confirmatory exams or the FE exam. If specific accommodations are desired, they should be specifically requested, and this request reviewed by APEGA if it is acceptable. Mr. Mihaly did not request any accommodation to assist in the process, but rather, did not complete the requirements by either failing or failing to complete the requirements.

These arguments were the basis of the final decision of the Court, which was to reverse the ruling of the tribunal. The Court's conclusion was that the tribunal's reasoning was rife with error and failed to take into account relevant considerations. This conclusion also dismissed Mr. Mihaly's cross-appeal, which was dependent on finding *prima facie* discrimination that is not justified under section 11 of the Alberta Human Rights Act.

3.1 OPINIONS AND REFLECTION

We agree with the decision of The Court of Queen's Bench. The requirement of Mr. Mihaly to write examinations to prove his competency from his engineering training was in no way discriminatory to his country of origin. APEGA has the responsibility to regulate the engineering practice, and serve the public interest as individuals wishing to practice engineering or geoscience must first prove their competency [4]. We disagree with the opinion of the Alberta Human Rights Commission, as there is no evidence of *prima facie* discrimination in the regulatory process of APEGA and its method of providing accommodations to foreign trained applicants.

With closed licensing laws, it is imperative that in order to work as a Professional Engineer that one must meet various standards and criteria established by APEGA. Accreditation contributes largely to this process and the validation of engineering programs by the CEAB ensures that engineering graduates have the necessary skills to begin working as an E.I.T. and later potentially apply for their professional engineering designation. There are measures in place to examine international engineering programs such as Mutual Recognition Agreements (MRA's) and Substantially Equivalent Programs. These assessments are to determine, without discrimination, if international programs meet the same requirements that Canadian programs are held to by accreditation standards.

If a program does not meet these standards, it is not discriminatory to the country of origin, but simply the fact that the program does not provide opportunity for the full requirements expected of a program to be achieved. APEGA is required to provide reasonable accommodation and assistance to guide foreign trained applicants through the process, however these strict requirements need to be fulfilled with no exceptions. If an applicant is unfamiliar with Albertan requirements, or is having issues understanding the process, resources should be available and provided to these applicants. If reasonable requests for accommodations are submitted, these should be analyzed on a case by case basis, however this should not interfere or contradict any of the standards and regulations that are outlined by APEGA. MRA's and substantially equivalent programs have been analyzed thoroughly, and the final decision on the acceptability of the program should be non-negotiable. If these agreements do not exist, or they are never requested from another nation – an applicant is required and should expect examination. This method of determining knowledge is in no way discriminatory, it falls within the mandate of APEGA to uphold the engineering profession and protect the public. If accommodations are required, they should be specifically outlined and requested. In Mr. Mihaly's case, he either failed or avoided the requirements and never requested further accommodation, but rather tried to prove his training fulfilled the requirements.

In the December 2016 ruling of the Alberta Court of Appeal, Justice Frans Slatter stated that both institutions in Canada and internationally must prove competency and adhere to the standards outlined by APEGA without exception [4]. The process of determining equivalencies outlined by APEGA is fair and equitable to all with no evidence of prima facie discrimination. These accusations are extremely detrimental to the reputation of a regulatory body, and it's very important that this process remain transparent and equitable to all. The Alberta Court of Appeal made the correct decision to not allow Mr. Mihaly to reopen the appeal he failed to follow up in June 2016 as it lacked merit as Mr. Mihaly could not address any patent error within the decision.

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