

ENGG 513

Case Study of Mihaly v. APEGA

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February 16, 2018

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Introduction

This report is a case study of the Mihaly v. APEGA case where Mr. Ladislav Mihaly, a Czechoslovakian who received two masters degrees in Czechoslovakia before immigrating to Canada [1]. In 1999 he applied with APEGA for registration as a professional engineer. After reviewing his academic and work experience, APEGA's Board of Examiners determined he would have to write, and pass, some examinations before his application could be approved. After many failed attempts to pass these examinations, Mr. Mihaly filed a complaint with the Alberta Human Rights Commission claiming that APEGA had discriminated against him in his application on the grounds of his place of origin. The AHRT found in favor of Mr. Mihaly. The case study is focused on the case where APEGA is repealing the decision of the AHRT.

This report will give a brief overview of key stakeholders involved in this case, a more detailed background and summary of the proceedings of the case, and a personal reflection on the decisions made.

Stakeholders

APEGA

APEGA is the Association of Professional Engineers and Geoscientists of Alberta, which regulates the practices of engineering and geoscience in Alberta, acting on behalf of the Government of Alberta [2]. APEGA is responsible for allowing individuals and companies the right to practice as professional engineers and geoscientists and to operate using restricted titles and designations. APEGA's standards for both individuals and companies are based off of ethical, professional, and technological competencies [2]. APEGA holds a stake in the outcome of this case in that a final outcome that does not favor APEGA could mean that their ability to maintain their level of standards becomes much more difficult.

The Court of Queen's Bench

The Court of Queen's Bench is a court that deals with legal cases in Alberta. These cases include criminal, civil, and the judicial review of government and tribunal action [3]. This means that the Court of Queen's Bench has the ability to appeal and reverse the decisions of government and tribunals in Alberta. The Court of Queen's Bench hold a stake in this case in that their interest and goals are to uphold the law and to allow for justice for all.

The Alberta Human Rights Commission

The Alberta Human Rights Commission (AHRC) is an independent commission that works to carry out functions of the Alberta Human Rights Act, which grants Albertans rights and protections from discrimination [4]. The AHRC uses tribunals and court hearings as a way to fulfill these obligations. The AHRC has a stake in the outcome of this case as their goal is to protect Albertans from discrimination.

Mr. Ladislav Mihaly

Mr. Mihaly was born in Czechoslovakia and obtained a M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University and a Certificate in Corrosion Engineering from the Institute of Chemical Technology [1]. After immigrating to Canada,

Mr. Mihaly had applied to APEGA in May 1999 to register as a professional engineer. Mr. Mihaly has a stake in the outcome of this case in that the outcome of this case will impact his future employability, mostly in regards to his ability to work as a professional engineer.

Citizens of Alberta

The citizens of Alberta, or Albertans, have a stake in the outcome of this case as well. One of the reasons that working as a professional engineer is a protected title, and APEGA has standards about who can work as a professional engineer, is due to public safety. Engineers play a significant role in the creation of many things that are used every day. The public has an interest in making sure that the individuals who are responsible for such critical components of our society will have the competence and ethics to keep public safety as the priority of any engineering project.

Engineers of Alberta

All engineers of Alberta, both current and future engineers, have a stake in the outcome of this case as it will affect their careers. Should the outcome result in a change of the standards that APEGA has for its engineers, this could result in an increase of registered professional engineers. Along with this, having lower standards for professional engineers in Alberta could mean a transition of work away from Albertan engineers and engineering firms.

Other Professionals of Alberta

Similarly with the Engineers of Alberta, other professionals working in Alberta have a stake in the outcome of this case. For similar reasons, other professions also have a regulatory body that is used to maintain a base standard in professionals working in various fields, controlling the use of restricted titles and designations. If this case were to impact APEGA's ability to enforce certain standards, by requiring examinations when required, then there is a possibility that the same argument could be made against the other regulatory bodies for other professions, resulting in similar problems to engineers in Alberta.

Background

The case begins with Mr. Mihaly immigrating to Canada, and applying to register as a professional engineer with APEGA in May of 1999. As with all applicants, Mihaly's academic and professional qualifications were reviewed by APEGA's Board of Examiners, and they determined that Mihaly would have to write, and pass, the National Professional Practise Exam (NPPE), three confirmatory examinations and a course on Engineering Economics before May of 2001 in order for his application to be accepted [1]. Mr. Mihaly failed his first attempt to pass the NPPE in January 2000, and applied to write it again later that year, which he did not attend [1].

Since Mr. Mihaly failed to pass the NPPE and the three confirmatory exams by May of 2001, APEGA withdrew his application in June of 2001. Almost a year later Mihaly requested to reactivate his application and applied to write the NPPE in a couple months, which he ended up failing again. APEGA had reactivated the application and told Mr. Mihaly that he would have to write, and pass, the same examinations and economics course, with the examinations needing to be written by May of 2003. In January 2003, Mihaly wrote the NPPE for the third time and failed. Since he had not written the three confirmatory exams before the required date, APEGA once again withdrew his application [1].

In October of 2006, Mr. Mihaly requested for his application to be reactivated. APEGA requested an updated resume and list of references. In August 2007 APEGA's Board of Examiners had reconsidered his application and required he complete the three confirmatory exams, plus an Engineering Economics course or the Fundamental of Engineering Examination (FE) in place of the course [1]. They had also determined that Mr. Mihaly did not meet the required minimum one-year acceptable Canadian engineering experience [1]. Mr. Mihaly did not write any of these examinations.

In August of 2008, Mr. Mihaly filed a complaint with the Alberta Human Rights Commission (AHRC) alleging that, when denying him registration as a professional engineer, APEGA was discriminating against Mr. Mihaly based on his place of origin [1]. In February 2014, the AHRC's tribunal found in favor of Mr. Mihaly, and awarded him \$10,000 in general damages, along with ordering APEGA to reconsider his application [1]. The results of the complaint also directed APEGA to offer more support and guidance to Mr. Mihaly in integrating into the engineering profession [1].

After this decision was made, APEGA filed an appeal of the decision with the Court of Queen's Bench in December of 2014 [1]. Since the main pillar of the AHRC's tribunals decision was based on the argument that APEGA did not reasonably accommodate Mr. Mihaly, this was the main focus of the Court of Queen's Bench's review [1]. In the end, the Court of Queen's Bench found in favor of APEGA, stating that the tribunal's decision was “rife with logical errors, findings of fact that are not supported by the evidence, and failures to take into account relevant considerations,” and reversed the tribunal's decision in January 2016 [1].

In February 2016 Mr. Mihaly filed to appeal the decision of the Court of Queen's Bench to the Alberta Court of Appeal, but failed to submit the proper papers on time [5]. The appeal was struck in June, and then resubmitted in December, claiming that the Court of Queen's Bench refused to accept materials he tried to submit that would support his application [5]. The appeal was heard and dismissed in January 2017 [5].

The Court of Queen's Bench Decision

The review done by the Court of Queen's Bench (The Court) was focused on the tribunal's finding that APEGA did not reasonably accommodate Mr. Mihaly [1]. For example, the tribunal determined that APEGA's requirement to write the FE Exam or the confirmatory exams did not accommodate Mr. Mihaly as APEGA, as outlined in the Engineering and Geoscience Professions Act (EGPA), should have only given Mihaly examinations to correct perceived academic deficiencies and not a generic examination [1]. In other words, the tribunal believed that APEGA should have been giving Mr. Mihaly examinations that would help make up for any academic deficiencies. The Court found that the tribunal only concluded this due to a misinterpretation of the EGPA, which is an interpretation the Court of Queen's Bench found unreasonable [1].

Along with the tribunal concluding that APEGA was responsible for accommodating Mr. Mihaly and guiding him on his journey to become a professional engineer, the tribunal also incorrectly concluded that APEGA's decision to require Mr. Mihaly to write the FE Exam and confirmatory exams was to make up for any academic deficiencies [1]. Again, The Court found this to be incorrect, and found that the examinations being required were instead a method of APEGA ensuring the competency of Mr. Mihaly [1]. This follows in line with the spirit of the EGPA.

Next, the tribunal assumed that the FE Exam would have a negative impact on foreign applicants educated outside of Canada, preventing them from registering as professional engineers [1]. The Court concluded that there is no evidence to support this assumption and noted that the FE Exam has a pass rate of around 85%, and that anyone who fails it is allowed to retake the exam [1]. The Court also noted that it is unknown if Mr. Mihaly would have ever passed this exam as he had never taken it, and agreed with APEGA that internationally educated applicants with an entry level competence would not have difficulty passing the FE Exam [1].

The Court found that, despite the tribunal agreeing that the exams are used to test the knowledge that would be expected of all graduates of an accredited engineering program would possess, the tribunal's statement that "[f]oreign engineering graduates ... are expected by [APEGA] to 'run 2.5 km in 11 minutes' like all Canadian engineering graduates," is "simply untenable" [1]. The Court stated that foreign engineering graduates are not expected to "run 2.5 km in 11 minutes," but rather are expected to have a basic level of competence expected by engineering graduates of accredited engineering programs and that "... possession of entry level engineering competence is, obviously, reasonably necessary to safe practice as a professional engineer" [1].

To conclude their findings, The Court summarizes the case up to this point very well when it wrote: "From the Tribunal's unreasonable interpretation of the EGPR, to his unsupported assumption that the FE Exam disproportionately excludes foreign trained engineers from being registered with APEGA, to his failure to appreciate that demonstrated entry level engineering competence is reasonably necessary to safe practice as a professional engineer, and his failure to consider relevant factors in the assessment of undue hardship, it is clear that his conclusion regarding accommodation falls outside the range of acceptable outcomes that are defensible in light of the facts and law; and as such was unreasonable" [1]. The Court concluded that the decision of the tribunal should be reversed and that there is no need to remit the matter back to the tribunal [1].

Reflection and Opinion

I believe that the conclusions and decisions of the AHRC are unreasonable. Assigning consistent examinations to any individuals, foreign or local, who do not meet the standards or requirements of the Board of Examiners is not discriminatory. If an individual is unable to provide documentation to prove their competence, then an examination is an easy way to prove. The exam is a simple exam and not something that requires many days or weeks to complete, and thus is reasonable to write. Adding to this, I believe that, due to the need to assure that professional engineers have a basic level of competency, there is some expectation that any individual who wishes to pursue a career as a professional engineer has to be willing to take some extra steps to prove their capabilities. In the same way any other professional has to.

Furthering this idea, I believe the decisions of the Court of Queen's Bench were reasonably justified. The Court took in to consideration the spirit of the EGPA, the public interest, and was able to make a fair conclusion. Along with this, I believe the Alberta Court of Appeal was also correct in their decision as I believe that the Court of Queen's Bench had made fair decisions.

Regarding my opinion of foreign-trained engineers, I believe that APEGA should give a fair chance to all foreign applicants, holding them to equal standards as locally-trained engineers. One of the key

principles of engineering is working as a team. This principle is based off of the idea that a diverse group of individuals will be able to formulate different ideas, bring different experiences, and offer different perspectives on engineering problems. Having a foreign-trained engineer helps strengthen an engineering team based solely off of this principle.

However, I believe that there has to be some level of self responsibility for all applicants. In the case of Mr. Mihaly, he failed the examinations multiple times, failed to show up to one of them, and did not even attempt to write many of the exams that the Board of Examiners had required he write [1]. Furthermore, when he attempted to appeal the decision of the Court of Queen's Bench with the Alberta Court of Appeal, he failed to file his papers on time [5]. Some of the basic competencies of an engineer are that they do their due diligence while doing any kind of work, which is one of the things that APEGA is looking for. While I do feel sympathetic for Mr. Mihaly in that he was unable to continue his career as an engineer after immigrating to Canada, I am glad that APEGA was able to prevent someone of this character from becoming a professional engineer. Had Mr. Mihaly taken the first few failed exams as an indication that there is something that he can improve in himself, rather than an indication there is a problem with the system, he may have been able to study and gain the entry level competency to pass the examinations and continue on his career as an engineer.

References

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