

Mihaly Case Study Report

Course: ENGG513

Student name: Hugo Denham-Wells

Student number: 30057617

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Instructor: Dennis Onen

Introduction

This report discusses the alleged violation of the Alberta Human Rights Act by the Association of Professional Engineers and Geoscientists of Alberta (APEGA) for the requirements placed on Mr. Ladislav Mihaly for registration as a Professional Engineer, and subsequent complaints, appeals, and cross-appeals as a result. The purpose of this report is to outline the stakeholders in the cases, summarise the court proceedings and decisions, and provide a final reflection and opinion on the outcome of the cases. In 1999 Czechoslovakian born-and-educated Mr. Ladislav Mihaly first applied for registration as a Professional Engineer by the Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA, now known as APEGA since March 2012 and referred to as APEGA throughout this report). After failing to meet the prescribed requirements Mr. Mihaly filed a complaint with the Alberta Human Rights Commission Tribunal (AHRC Tribunal) against APEGA for human rights violations, alleging discrimination due to his country of birth. Mr. Mihaly was awarded damages and APEGA was ordered to aid Mr. Mihaly in his application. APEGA later successfully appealed this decision at the Court of Queen's Bench. Mr. Mihaly filed one final unsuccessful appeal at the Court of Appeal of Alberta.

Stakeholders

APEGA

The Association of Professional Engineers and Geoscientists of Alberta, or APEGA, is the body responsible for regulating the practise of professional engineering and geoscience in Alberta [1]. In 2008 Ladislav Mihaly filed a complaint against APEGA with the AHRC Tribunal. In the complaint Mr. Mihaly alleged that he had been discriminated against by APEGA when he was denied registration as a Professional Engineer. The AHRC Tribunal initially ruled in favour of Mr. Mihaly and APEGA was made to pay \$10,000 to Mr. Mihaly [2]. APEGA later successfully appealed this decision at the Court of Queen's Bench.

The Court of Queen's Bench

The Court of Queen's Bench is the Superior Trial Court for the Province of Alberta. It is responsible for hearing trials in civil and criminal matters, as well as appeals from the decisions of the Provincial Court [3]. In November of 2014 APEGA filed its appeal of the AHRC Tribunal's decision in favour of Mr. Mihaly. The Court of Queen's Bench ruled to

reverse the decision of the AHRC Tribunal in January 2016. The Court of Queen's Bench also dismissed Mr. Mihaly's cross-appeal in January 2016 [4].

The Alberta Human Rights Commission

The Alberta Human Rights Commission (AHRC) is an independent commission of the Government of Alberta. It is responsible for the reduction of discrimination in the province of Alberta. It does this through the resolution and settlement of complaints of discrimination, and through the AHRC tribunal and court hearings [5]. In 2008 Mr. Mihaly filed a complaint with the Tribunal, alleging that he was discriminated against by APEGA in his effort to be registered as a Professional Engineer. The Tribunal ruled in favour of Mr. Mihaly, awarded him \$10,000, and imposed requirements on APEGA to assist in Mr. Mihaly's registration as a professional Engineer [2].

Mr. Ladislav Mihaly

Ladislav Mihaly was born in Czechoslovakia and completed two degrees there. He then immigrated to Canada where he applied to become a Professional Engineer in May of 1999. APEGA considered Mr. Mihaly's application and determined that he must pass the National Professional Practice Exam (NPPE), complete three confirmatory examinations, and take a course or pass an exam in Engineering Economics. After repeatedly not meeting the requirements given to him by APEGA he filed a complaint with the AHRC Tribunal in August 2008 alleging that he was discriminated against by APEGA. While successful in his complaint, APEGA successfully appealed the decision in January 2016 at the Court of the Queen's bench. Mr. Mihaly attempted to cross-appeal during APEGA's appeal and was unsuccessful. In February 2016 Mr. Mihaly attempted to restore an appeal he had filed but was unsuccessful [6].

The People of Alberta

The people of Alberta are a key stakeholder in any decisions made in relation to the Mihaly v. APEGA cases. A key responsibility of APEGA is to ensure that all Professional Engineers uphold their duties to the public. These responsibilities of a Professional Engineer to the public include the safeguarding of life, health, property, and public welfare. If APEGA had rejected foreign educated engineers on discriminatory grounds, then the people of Alberta have missed out on the resources and abilities of foreign educated engineers who would have

otherwise have practiced as a Professional Engineer in Canada. Conversely, if the AHRC Tribunal's decision had been upheld and APEGA had provided additional resources for foreign educated engineers to gain qualification as Professional Engineers who would otherwise not qualify the people of Alberta may suffer as under-skilled engineers are given the same titles as highly skilled engineers.

Foreign Educated Engineers

Foreign educated engineers who wish to immigrate to Canada and practice as Professional Engineers are also impacted by decisions made in the Mihaly v. APEGA cases. The final appeal decision by the Court of Queen's Bench meant that the previous precedent set by the AHRC Tribunal ordering APEGA to search for alternatives to examinations and appoint a committee to assess an applicant and provide individual assistance and guidance for Mr. Mihaly no longer applied. This decision has the potential to detrimentally impact future immigration in to Canada of foreign educated engineers.

Canadian Professional Engineers and Geoscientists

Currently practicing Canadian Professional Engineers and Geoscientists, as well as engineers and geoscientists current in training are impacted by decisions made in relation to Mr. Mihaly and his registration as a Professional Engineer. If Mr. Mihaly was not discriminated against by APEGA and was truly underqualified to practise as a Professional Engineer in Canada but was given the supplementary resources mandated by the AHRC Tribunal and gained the qualification as a Professional Engineer, it would devalue the title of Professional Engineer in Alberta.

Background

Mr. Ladislav Mihaly was born in the former Czechoslovakia and completed his M.Sc. Diploma at the Slovak Technical University in 1975 and graduated with a specialization in Technology of Fuels and Thermal Energy. He then completed a Certificate in Corrosion Engineering at the Institute of Chemical Technology (ICT) in Prague in 1979. Mr. Mihaly applied to APEGA for registration as a Professional Engineer in 1999. In his application Mr. Mihaly claimed that his two qualifications from the former Czechoslovakia were Masters degrees, but his education was later found to correspond more closely to a Canadian Bachelor's degree. In January of 2000, the APEGA Board of Examiners considered Mr.

Mihaly's transcripts from his prior education, and supporting documents, and determined that Mr. Mihaly must complete the National Professional Practice Exam (NPPE), three confirmatory examinations, and take a course or pass an equivalent exam in Engineering Economics by May 2001. Mr. Mihaly attempted the NPPE, and in February 2000 APEGA advised him that he had failed. In June 2001 APEGA withdrew Mr. Mihaly's application as he failed to write the prescribed confirmatory exams. APEGA reactivated his application in May 2002 and deactivated it a second time in August 2003 due to Mr. Mihaly's failure to complete the three confirmatory examinations. In October 2006 Mr. Mihaly again requested to have his application reactivated. APEGA reactivated his file and again prescribed Mr. Mihaly three confirmatory exams and a course or equivalent exam in Engineering Economics. Mr. Mihaly again did not complete APEGA's requirements and in August 2008 he filed a complaint against APEGA through the AHRC Tribunal.

In his complaint Mr. Mihaly alleged that he was discriminated against by APEGA when applying for registration as a Professional Engineer in Alberta. Mr. Mihaly claimed that the requirements set by APEGA are contrary to the Alberta Human Rights Act. In the trial Mr. Mihaly chose to represent himself. Mr. Mihaly made no formal submission for remedies of the alleged abuse but referred to monetary loss due to not being able to work as an Engineer in Alberta in his initial complaint and written submission. Mr. Mihaly was not awarded lost wages due to 'uncertainties involved in licensing and subsequent employment' [2], but he was awarded general damages of \$10,000 in the commission's decision in February 2014. In addition to paying Mr. Mihaly damages, APEGA was required to review Mr. Mihaly's transcripts and experience in direct consultation with his educational institutions and previous references to identify areas of the initial APEGA requirements he could be exempted from; give Mr. Mihaly an opportunity to challenge specific examinations he is not exempted from; establish a committee of engineers (preferably foreign-trained engineers) to assess Mr. Mihaly's qualifications and correct any academic deficiencies, with APEGA reviewing the committee's findings and apply an individualized assessment program to Mr. Mihaly; match Mr. Mihaly with a mentor to provide him with guidance; direct Mr. Mihaly to resources that will allow him to network with other foreign engineers; and direct Mr. Mihaly to resources to improve his fluency in the English language.

In November 2014 APEGA filed an appeal against the AHRC Tribunal's decision. Mr. Mihaly cross-appealed the AHRC Tribunal's decision to not award him damages for lost

wages and seeks an award of \$1,000,000 and registration as a Professional Engineer with APEGA, or \$2,000,000 if not registered with APEGA. In January 2016 due to evidence presented at the Court of Queen's Bench, APEGA's appeal was successful and the AHRC Tribunal's decision was overturned. In addition, Mr. Mihaly's cross appeal was dismissed. In the ruling, the Court of Queen's Bench stated that the AHRC 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' [4].

In February 2016 Mr. Mihaly filed an appeal of the Court of Queen's Bench's decision at the Court of Appeal of Alberta but did not complete requirements and the appeal was struck for 'failure to file the Appeal Record'. In December 2016 Mr. Mihaly applied to restore his appeal. In January 2017 the Court of Appeal of Alberta ruled that Mr. Mihaly had not met the requirements for restoration of his appeal, and the application was dismissed.

The Court of Queen's Bench Decision

In November 2014 APEGA filed its appeal against the AHRC Tribunal's appeal at the Court of Queen's Bench of Alberta. This appeal raised the following issues with the AHRC Tribunal Tribunal's decision, taken from the Court of Queen's Bench decision [4]:

1. *Procedural fairness: Did the Tribunal breach the rules of procedural fairness when he decided issues that were not raised by or with the parties?*
2. *Jurisdiction: Did the Tribunal err when he held that he had jurisdiction to determine whether discrimination based on the place a person receives their education constitutes discrimination based on place of origin?*
3. *Prima facie discrimination: Did the Tribunal rely on the correct legal test, and reasonably apply that test, to determine whether Mr. Mihaly had demonstrated prima facie discrimination?*
4. *Justification: Was the Tribunal's decision that APEGA's registration requirements were unjustified unreasonable?*

The Court of Queen's Bench ruled that APEGA's first issue was not valid, and that the AHRC Tribunal had not breached the rules of procedural fairness. The Court of Queen's Bench also ruled that APEGA was not able to substantiate their claim that the AHRC Tribunal lacked jurisdiction.

The Court of Queen's Bench found that the AHRC Tribunal had failed to apply the correct legal test to the NPPE and Canadian experience requirements. Because of this, the Court of Queen's Bench ruled that the AHRC Tribunal's finding of *prima facie* discrimination relating to the NPPE and Canadian experience requirements was unreasonable. Additionally, the Court of Queen's Bench found that the AHRC Tribunal's decision that APEGA had failed to justify its requirements for Mr Mihaly's registration under section 11 of the Alberta Human Rights Act was unreasonable. On the justification of APEGA's requirements, the Court of Queen's Bench states that 'APEGA's undisputed evidence clearly met the onus to establish the "reasonable and justifiable" defence'.

APEGA's appeal sought a reversal of the decision of the AHRC Tribunal through the jurisdiction given to the Court of Queen's Bench in the Alberta Human Rights Act. This appeal was successful and in January 2016 the AHRC Tribunal's decision was reversed. Due to the success of Mr. Mihaly's cross-appeal depending on the finding of *prima facie* discrimination by the Court of Queen's Bench, Mr. Mihaly's cross-appeal was dismissed.

Reflection and Opinion

The decision made by the AHRC Tribunal in favour of Mr. Mihaly had potentially wide-reaching impacts for not only APEGA, but other Canadian Engineering Associations and associations of other self-regulating professions, such as Doctors and Lawyers. Mr. Mihaly was provided multiple chances to complete the prescribed examinations and requirements outlined by APEGA and either failed or refused to complete them each time his application was renewed. It is my opinion that Mr. Mihaly was not discriminated against on the basis of his country of origin or country of education. If Mr. Mihaly had been found to be discriminated against I believe that the AHRC Tribunal's ruling placed too heavy a burden on APEGA, and potentially other self-regulating professional associations. Due to the potential for Mr. Mihaly's case to be used as a precedent in other similar cases, it is possible that APEGA would be required to provide resources such as individualized testing and mentoring to all foreign educated engineers. On the assistance APEGA was required to give, the AHRC Tribunal's decision states that it 'would not cause undue hardship to the engineering profession nor does it appear to be cost prohibitive with all the dues-paying members' [2]. On this, I agree with the Court of Queen's Bench that it would be cost prohibitive to provide this level of assistance to all potential Professional Engineers. I believe that if Mr. Mihaly had

been found to be discriminated against, the AHRC Tribunal's ruling is still unjustifiable and unreasonable.

The Court of Queen's Bench decision to reverse the AHRC Tribunal's ruling is based on the failure of the Tribunal to apply the correct legal tests to prove Mr. Mihaly's claim of discrimination. Due to the legal precedents outlined in the decision and use of accepted legal tests by the Court of Queen's Bench I agree with the reversal of the AHRC Tribunal's ruling and requirements against APEGA. I also agree with the Court of Queen's Bench decision to dismiss Mr. Mihaly's cross-appeal, as it relies on the ruling of *prima facie* discrimination against him.

Mr. Mihaly's initial appeal of the Court of Queen's Bench decision was struck based due to his failure to perfect his appeal. Mr. Mihaly attempted to restore his appeal, and the Court of Appeal of Alberta stated that Mr. Mihaly had failed to comply with the criteria for restoring an appeal [6]. Due to Mr. Mihaly's failure to complete the requirements I agree with the Court of Appeal's decision to dismiss Mr. Mihaly's application to reinstate his appeal.

I am of the opinion that APEGA should accommodate foreign-trained engineers and geoscientists through the even-handed prescription of standardized testing to all applicants whose qualifications are not recognized as equivalent by APEGA. By reviewing the testing requirements at a regular interval APEGA could ensure that the standardized testing is relevant and thorough enough to ensure foreign educated engineers are just as capable as Alberta educated Professional Engineers. Though individualized testing and mentoring provides more insight in to an individual's skills and merits, the cost of providing this to all applicants prohibits its integration in to APEGA's current registration process.

References

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