

ENGG 513
The Roles & Responsibilities of the Professional Engineer In Society

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Mihaly vs. APEGA Case Study

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Introduction

This report is a case study of The Court of Queen's Bench's judgement of APEGA's appeal against the decisions made by the Human Rights Commission regarding Mr. Ladislav Mihaly's complaint. Mr. Ladislav Mihaly filed complaint against APEGA on August 5, 2008 [1] claiming that APEGA discriminated against him based on his geographical background, and denied his registration as a Professional Engineer. This is a complex issue that can be studied to gain a better insight into the legal and regulatory framework that encompasses the process of becoming a professional engineer. In this report we will be examining the issue in detail from the perspective of different stakeholders with the intent of gaining a deeper insight into APEGA's accreditation process.

Stakeholders

A stakeholder is a person or an organization that is directly involved with the issue. The stakeholders in this case are listed below:

APEGA: Association of Professional Engineers and Geoscientists of Alberta (APEGA) is a licensing organization that regulates the professions, and reinforces the standard of conduct for professionals. Mr. Ladislav Mihaly filed a complaint against this organization for discriminating against him and denying his request to register as a Professional Engineer. APEGA has a stake in regulating the practice of engineering on behalf of the Government of Alberta through licensing individuals and companies.

The Court of Queen's Bench: The Court of Queen's Bench is the superior court of Alberta. It hears trials in civil and criminal matters as well as appeals of the decisions of the criminal court. It has a stake in facilitating access to justice in accordance with the laws.

The Alberta Human Rights Commission: The Alberta Human Rights Commission was established under Alberta Human Rights Act and is a quasi-judicial human rights entity in Alberta. It is responsible for resolving and settling the discrimination complaints through tribunal and court hearings. It has a stake in upholding the human rights of all citizens in Alberta including discrimination based on geographical location.

Mr. Ladislav Mihaly: Mr. Mihaly acquired his Master of Science Diploma in Bratislava in 1975, and later obtained a Certificate in Corrosion Engineering in Prague in 1981 [2]. Mr. Mihaly had 10 years of experience, and he has also worked at a Research Institute for several years. Mr. Mihaly filed a complaint stating that APEGA has discriminated against him by denying his registration as a Professional Engineer regardless of his expertise in the field of

engineering. Mr. Mihaly is one of the main stakeholders because he is being affected directly by the decisions made by The Human Rights Commission as well as The Court of Queen's Bench.

Mr. Mark Tokarik: Mr. Mark Tokarik obtained his Bachelor's of Science in Engineering in 1981, and then acquired his Bachelor of Law in 1989. Mr. Tokarik then worked for a law firm for a few years prior to joining APEGA as an Assistant Director of Registration in 1999, and then became the Director of Registration [1]. Mr. Tokarik was in direct contact with Mr. Mihaly through email and telephone exchanges. Mr. Mark holds a stake in this as he is responsible for enforcing APEGA's rules and regulations with regards to new registrations.

Moosa Jiwaji: Mr. Jiwaji was the Human Rights Tribunal chair for this case hearing. Mr. Jiwaji's role means he has a stake in upholding the tribunal's decision and ensuring that any human rights violation is rectified.

Foreign Credentialed Engineers: The decision from the Alberta Human Rights tribunal sets a precedent for future engineers who are applying to register with APEGA. Any foreign engineer will have a stake in whether their language and educational difference are considered when obtaining a licence.

Background

Mr. Ladislav Mihaly was born and raised in Czechoslovakia. He obtained his Master of Science Science Diploma with specialization in Technology of Fuels and Thermal Energy from Slovak Technical University in Bratislava in 1975 [2]. A few years later, he obtained a Certificate in Corrosion Engineering from Institute of Chemical Technology in Prague in 1981 [2]. After moving to Canada, Mr. Mihaly submitted his application to Association of Professional Engineers and Geoscientists (APEGA) to register as a Professional Engineer (P.Eng). After reviewing the application, APEGA requested transcripts and asked Mr. Mihaly to pass the National Professional Practice Exam (NPPE) as well as three confirmatory examination and either take a course or pass an equivalent examination in Engineering Economics by May 2001 [2]. Mr. Mihaly complied, registered for NPPE and failed the examination. Mr. Mihaly registered to write the NPPE once again on October 16, 2000, however, this time he did not show up to write the examination. This resulted in APEGA withdrawing Mr. Mihaly's application since Mr. Mihaly had failed to fulfill the requirements by the end of May 2001 [2].

Mr. Mihaly requested APEGA to reactivate his application on May 11, 2002, and APEGA restated the same requirements (the NPPE examination, three confirmatory examinations, and a course or an equivalent examination in Engineering Economics) that must be met in order to provide Mr. Mihaly with the P.Eng designation. Mr. Mihaly registered for the

NPPE examination twice since the reactivation of the application and failed both times. On June 20, 2002, Mr. Mihaly contacted APEGA through an email expressing his astonishment after learning that his Master of Engineering Scientist degree is not even equivalent to the Bachelor of Science degree in Alberta. The next day Mr. Mihaly received a formal reply from APEGA wherein Mr. Mark Tokarik stated “*We had previously advised you in our February 2000 letter that your degree in Chemical Engineering from Bratislava does not meet APEGGA’s academic requirements. We advised you that your degree is listed on the Canadian Council of Professional Engineers Foreign Degree List and that your confirmatory examinations assessment is the standard assessment in such cases.*” [1] Mr. Mihaly stated that he had no record of such information previously provided by APEGA. Mr. Mihaly also had a telephone conversation with Mr. Tokarik requesting a waiver and possible exemption of examination based on his 10 years of past experience. However, Mr. Tokarik restated the same requirements that need to be accomplished by Mr. Mihaly. Mr. Tokarik also suggested that Mr. Mihaly could file an appeal if he desires to do so, however, Mr. Mihaly took no such action. Mr. Mihaly was once again provided with a deadline to complete the examinations by November 2003. Eventually, APEGA had to withdraw Mr. Mihaly’s application again due to lack of fulfillment of the requirements.

APEGA again reactivated Mr. Mihaly’s application on October 18, 2006 and requested Mr. Mihaly to submit an updated resume and references. On August 10, 2007, the Board of Examiners restated the previously mentioned requirements to Mr. Mihaly, and also required him to obtain one year of acceptable D level Canadian Engineering experience [2]. Mr. Mihaly did not write the required examinations, and filed the complaint against APEGA on August 5, 2008 “...with Alberta Human Rights Commission pursuant to the *Alberta Human Rights Act, RSA 2000, c A-25 [AHRA]*.” [2]

This case was filed and proceeded under Section 4 and 9 of the Alberta Human Rights Act. This act states that no person should be denied any services or facilities that are available to the public, and/or discriminated against with respect to such services [3]. The Act also states that no organization or association “...shall (a) exclude any person from membership in it, (b) expel or suspend any member of it, or (c) discriminate against any person or member because of ... place of origin...” [3].

The Court of Queen's Bench Decision

After reviewing all the facts presented by the plaintiff, Mr. Mihaly, and the defendant, APEGA, the Tribunal made their decision on February 6, 2014 [2]. Mr. Jiwaji, the Tribunal chair, stated that the standards utilized by APEGA in assessing Mr. Mihaly's application were unjust based on Mr. Mihaly's place of origin. This was considered as discrimination under the Alberta Human Rights Act under Section 4 and 9. Mr. Mihaly was awarded \$10,000 in general damages as a result, and the Tribunal also stated that APEGA needs to reconsider Mr. Mihaly's application to register as a Professional Engineer. However, Mr. Mihaly was not provided monetary compensation for his lost wages due to the lack of proper evidence for such claims. The Tribunal ordered APEGA to appoint a committee to provide individual assessment options for Mr. Mihaly along with exam exemptions, and assigning a mentor to Mr. Mihaly to aid his integration into the engineering profession in Alberta. Mr. Mihaly was also addressed to undertake language courses.

However, the Tribunal's decision was reversed by Justice June Ross, The Court of Queen's Bench. Ms. Ross stated "The tribunal's reasons leading to (the chairman's) conclusion that APEGA could have accommodated Mr. Mihaly and others sharing his characteristics are rife with logical errors, findings of fact that are not supported by evidence and failures to take into account relevant considerations.... [therefore] I conclude that the decision of the tribunal should be reversed" [4]. Ms. Ross reversed the Tribunal's decision partly because the Tribunal proposed to appoint a committee for individual assessment and mentorship for Mr. Mihaly. This is highly unrealistic, however, and a possible misuse of APEGA's resources. The Tribunal also proposed possible exam exemptions for Mr. Mihaly and overlooked the fact that Mr. Mihaly had not attempted the three previous confirmatory examinations. Also, Mr. Mihaly's claim that the requirements set by APEGA were unjust was proven wrong given the evidence provided by APEGA. When an application is submitted to APEGA, the Board of Examiners examines the academic background of the applicant, however, in Mr. Mihaly's case "...the Board of Examiners has required the applicant to complete one or more confirmatory examinations or examinations for the purpose of correcting a perceived academic deficiency" [2]. Upon the reversal of the Tribunal's decision by the Queen's Bench, Mr. Mihaly filed an appeal to the Alberta Court of Appeal. The case was dropped in June 2016 when he failed to follow up. "As far as the merits of the appeal, the appellant does not point to any patent error on the face of the decision under appeal," Justice Frans Slatter of the Appeal Court wrote as he dismissed Mr. Mihaly's application.

Reflection and Opinion

We do not agree with the decision of the Alberta Human Rights Commission and largely consider APEGA's assessment to be fair. Mr. Mihaly obtained his degrees in the former Czechoslovakia and since education standards vary significantly from country to country, it was perfectly reasonable for Mr. Mihaly to give the required confirmatory examinations to assess his competency. This is not simply a regulatory requirement as the abilities of accredited engineers have and impact on the safety of the public at large. APEGA took many steps to provide Mr. Mihaly a chance to get acquainted with the Canadian standards of engineering, giving him multiple opportunities to retake the examination. The fact that he did not show up to retake the exam is telling and should have been considered by the tribunal as an indication of his investment in the required procedures. Without these examinations, Mr. Mihaly's competence cannot be verified and the Tribunal's decision to exempt Mr. Mihaly from these examinations is flawed. We agree in part with CQB's decision to reject the individual assessment of Mr. Mihaly's application and providing him with a mentor. This decision would make it unfair for every other foreign trained engineer who's applying for P.Eng designation as none of them receive individual accommodations. Also this would set a precedence where APEGA might be required to provide accommodations for over 300 new applicants a year, which is unreasonable to say the least. However, we do believe that Mr. Mihaly, and any other foreign trained engineer, should be informed of the rules and regulations in detail for a thorough understanding of APEGA's application procedures and requirements.

APEGA should not be expanding unreasonable amounts of resources to accommodate foreign trained engineers. The APEGA standards are there primarily to ensure the safety of public and not provide the easiest possible transition for new engineers. If any applicant requires special accommodations beyond the set procedures, then the engineering profession would put Albertans under an increased risk and APEGA's ability to maintain a professional standard would be put under question. This could also lead to legitimate discrimination complaints since the assessment process will vary significantly from one applicant to the next. It is necessary, therefore, to maintain a set rigorous standards regardless of the applicant's place of origin. However, better communication could go a long way in preventing such a case from occurring in the future. A yearly session should be held by APEGA to inform the foreign engineers applying for P.Eng in Canada about the requirements and rules of the whole process to provide a better understanding of the procedure. It would be detrimental to the Canadian engineering profession to deny the talent of foreign engineers simply because of a language barrier. Reasonable accommodations, something short of individual considerations, should be taken to integrate these engineers into our society based on Canadian standards.

References

- [1] *Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII)*. [Online]. Available: <http://canlii.ca/t/g3051> [Retrieved on: February 9, 2018].
- [2] *Court of Queen's Bench Decision*, 2016. [Online]. Available: <http://www.apega.ca/assets/PDFs/mihaly-decision.pdf> [Retrieved on: February 9, 2018].
- [3] *Alberta Human Rights Act, RSA 2000, c A-25.5*. [Online]. Available: <http://canlii.ca/t/53319> [Retrieved on: February 11, 2018].
- [4] Cotter, J., "Czech-trained engineer who failed Alberta tests not victim of discrimination, judge rules," CBC News, January 29, 2016. [Online]. Available: <http://www.cbc.ca/news/canada/calgary/alberta-human-rights-commission-rules-apega-discriminates-against-engineer-1.3425144> [Retrieved on: February 16, 2018].