



ENGG 513 REPORT 1

MIHALY VS APEGA

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Introduction

Mihaly vs APEGA is an important legal case for both the potential impacts of the outcome and as the basis for a discussion of ethics in engineering. In May of 1999 Ladislav Mihaly applied to join APEGA as a professional Engineer in Alberta after immigrating to Canada [1]. Mr. Mihaly had obtained a M.Sc. Diploma with a specialization in Technology and Thermal Energy from the Slovak Technical University in Bratislava in 1975 and a Certificate in Corrosion Engineering from the Institute of Chemical Technologies in Prague in 1981 and had worked in piping design and fabrication for over 10 years [1]. In spite of this APEGA informed Mr. Mihaly that he would be required to write the National Professional Practice Exam (NPPE), write 3 standard confirmatory examinations or write the Fundamentals of Engineering FE Exam, and take a course in engineering economics [1]. In 2014 the Alberta Humans Rights Commission ruled that this requirement from APEGA was discriminatory against Mr. Mihaly based on where he received his education and his place of origin. This case was taken to the Court of the Queen's Bench in 2016 which ruled in favour of APEGA and then the Alberta Court of Appeals which also ruled in favour of APEGA in January of 2017 [1].

Stakeholders

Ladislav Mihaly – Professional Engineer applicant to APEGA with foreign educational and work experience. He issued a complaint against APEGA to the Alberta Human Rights Commission for discriminating against him based on the place of his education [1]. After the tribunal's decision and an appeal by APEGA he counter-appealed to the Court of Queen's Bench for damages from lost wages [2]. After the decision by the Court of Queen's Bench he issued another appeal to the Court of Appeal Of Alberta which was rejected [3].

APEGA – The Association of Professional Engineers and Geoscientists of Alberta is responsible for issuing of licenses for Professional Engineers in Alberta [4]. Mr. Mihaly issued a complaint to the Alberta Human Rights Commission alleging discrimination [1],

and APEGA appealed the decision of the Tribunal to the Court of the Queen's Bench [2].

The Alberta Human Rights Commission – First legal body to oversee the case of Mihaly vs APEGA. Responsible for adjudicating complaints of violations of the Alberta Human Rights Act (AHRA). Tribunal ruled in favour of Mr. Mihaly that APEGA had discriminated against him based on his place of education [1].

The Court of Queen's Bench – The Superior Trial Court for the province of Alberta. Adjudicating trials in civil and criminal cases as well as appeals of decisions of the Provincial Court. Mr. Mihaly and APEGA both appealed the decision of the Alberta Human Rights Tribunal to the Court of the Queen's Bench. Ruled in favour of APEGA in 2016 [2].

Court of Appeal of Alberta – The court hears appeals from the Provincial Court and criminal and civil appeals from the Court of Queen's Bench. After the decision of the Court of the Queen's Bench Mr. Mihaly appealed to the Court of Appeal of Alberta in 2017. The Court of Appeal ruled in favour of APEGA and did not reverse the decision of the Court of Queen's Bench [3].

Engineers Canada / Canadian Engineering Accreditation Board – The Accreditation Board is part of Engineers Canada and evaluates undergraduate engineering programs and decide if those programs provide the academic requirements for licensure as a professional engineer in Canada. The Accreditation Board evaluates undergraduate programs in Canada and outside of Canada at the request of foreign institutions. Engineers Canada also maintains the Foreign Degree list (FD) [4].

Future Foreign Applicants – This case could have wide ranging impacts on foreign engineers applying to join any of the Professional Engineering and Geologists Associations of Canada. Had this case been decided in favour of Mr. Mihaly it could have dramatically impact the requirements of those professional associations to perform more in depth and individualized evaluations of applicant's educational background. The potential impact of this could be lowered standards for applicants or longer wait times for applications to be processed.

Background

Mr. Mihaly applied to join APEGA in May 1999 and was informed that he would be required to write the National Professional Practice Exam. He wrote the exam on January 17, 2000 and was informed in February that he had failed the exam and would be required to write 3 confirmatory examinations as his M.Sc Diploma was from an institution on the Foreign Degree list and take a course or pass an exam in engineering economics by May 2001 [1]. He was also still required to pass the NPPE.

The Canadian Engineering Accreditation Board (CEAB) is responsible for accrediting university engineering programs that meet Canadian standards for the professional engineer designation [5]. It also enters into Mutual Recognition Agreements (MRA) with other countries such as the United States and France that recognize the quality of each other's engineering accreditations. A Foreign Degree (FD) list is also maintained of known engineering schools that haven't been accredited by the CEAB [5]. Graduates of an institution on the FD list applying to APEGA are typically assigned three confirmatory examinations to verify their engineering educational background, if the school is not on the FD list, applicants can be issued up to nine confirmatory examinations [1].

In June of 2001 APEGA informed Mr. Mihaly that his application had been withdrawn since he did not write the required examinations by the May deadline. In May 2002 Mr. Mihaly asked APEGA to reactivate his application and wrote the NPPE on July 15, 2002 and again on January 20 2003 and failed both times and his application was withdrawn in August of 2003. In October of 2006 Mr. Mihaly asked APEGA to reactivate his application again and was asked by APEGA to provide an updated resume and list of references for his application which Mr. Mihaly provided. In August of 2007 APEGA informed Mr. Mihaly that he was still required to write the 3 confirmatory examinations and take a course or pass an exam in engineering economics [1].

In 2008 Mr. Mihaly filed a complaint with the Alberta Human Rights Commission, alleging that APEGA was discriminating him based on his place of origin when it denied him registration as a Professional Engineer. His complaint was filed under Sections 4, 7,

and 9 of the Alberta Human Rights Act (AHRA). In February of 2014 the tribunal decided that the Examination and Experience Standard used to assess Mr. Mihaly's experience without doing a more individualized assessment and exploration of options constitutes discrimination and Mr. Mihaly was awarded \$10,000 in damages and APEGA was required to reconsider the application and appoint a committee to assess and apply individual assessment options to correct any perceived academic deficiencies. The Tribunal did not award lost wages to Mr. Mihaly. This decision was appealed to the Court of Queen's Bench by both APEGA and Mr. Mihaly [1].

The Court of Queen's Bench Decision

After the decision of the tribunal the case was taken to the Court of the Queen's Bench under appeal from APEGA and cross appeal from Mr. Mihaly. Mr. Mihaly cross appealed to receive additional damages, asking for \$1,000,000 and immediate registration as a Professional Engineer with APEGA, or \$2,000,000 without the registration [2]. The basis of APEGA's appeal was the following [2]:

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?
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 judge disagreed with the first two arguments, stating that the tribunal had not breached procedural fairness and that the case was within the jurisdiction of the AHRA. The judge stated that the requirements to obtain one year of Canadian experience, and the requirement to pass the NPPE were not discriminatory against Mr. Mihaly as they were required of all applicants [2]. The judge also agreed with APEGA that by requiring

applicants with degrees not covered under a MRA to write the confirmatory exams or the FE exam it was not making any discriminatory assumptions of the quality of those programs. Instead APEGA made no assumptions of the quality of degrees included or excluded from the foreign. It was also decided that the requirement to write the FE exam or the confirmatory examinations was not an unreasonable expectation of foreign applicants, as the knowledge tested is the basis of the engineering profession [2].

The judge stated that the suggestion of the tribunal of APEGA to be more active in obtaining agreements with foreign institutions so that engineering graduates from those institutions would not require any confirmatory examinations is unreasonable. The process in which the CEAB accredits institutions is a long and complex process and APEGA couldn't be expected to have the resources to do this for the several thousand engineering programs on the Foreign Degree list [2].

In summary, the Court of Queen's Bench ruled that the requirements of APEGA "reasonable and justifiable" and the decision of the tribunal was reversed [2].

Reflection and Opinion

It is important to note that Mr. Mihaly had not exhausted his options internally with APEGA before taking this matter to court. He had never even attempted any of the confirmatory examinations or the FE exam before deciding that it was an unfair requirement. He had the potential to submit a Reconsideration and Appeal sheet to APEGA to ask that APEGA reconsider his professional and educational experience as sufficient evidence that he did not need to write the confirmatory examinations. The confirmatory examinations were also not the only requirement that Mr. Mihaly had failed to meet. He had yet to pass the NPPE or obtain one year of valid engineering work experience in Canada that APEGA required of all of Professional Engineer applicants either foreign or domestic [2].

I believe that the Court of the Queen's Bench was the correct decision although a difficult one. It is a fair argument that foreign engineers with a degree from an institution without a MRA with Canada are treated differently by APEGA in the application process from other applicants by being required to write additional confirmatory examinations or

the FE exam. However, this is not based on discriminatory assumptions that those engineers have an inferior education or professional background. It is because there is a distinct lack of information required to confirm that their educational background meets the requirements expected of a Professional Engineer in Canada. APEGA has a responsibility to the residents and businesses of Alberta to ensure the integrity of the Professional Engineer designation. This case was very important for APEGA for the potential precedent it set. APEGA receives approximately 1500 foreign applicants for the Professional Engineer designation each year, by standardizing the method of assessment APEGA can assure that those engineers are qualified and reduce the resources required to process each application [2]. Had the tribunals ruling held, and APEGA had been required to appoint a committee to assess individual assessment options for Mr. Mihaly this could have dramatic impacts on APEGA's foreign applicant processing in the future. If each applicant that was required to write the standard three confirmatory tests or the FE exam demanded that a more individualized test be developed for them it could dramatically increase the time required to process applicants and slow it down for other foreign applicants as well as drain additional resources from APEGA.

However, this case does demonstrate some potential shortcomings in the application process for the Professional Engineer designation for foreign applicants. Two valid issues with APEGA's process demonstrated were the requirement for 1 year of Canadian engineering experience, and the financial burden of the application process. If a foreign engineer immigrates to Alberta without a job lined up, it may be very difficult to obtain a level D (management level) without the Professional Engineer designation. Mr. Mihaly had over 10 years of experience but failed to find a job in Alberta that qualified him for the Canadian experience required by APEGA. However, the one year of experience is an important requirement to meet because it demonstrates that the applicant is familiar with the engineering profession in Canada and can function in the Canadian workforce it is another hurdle for foreign applicants to overcome. Another issue brought up was the subject of cost, payment is required to submit an application, to write the NPPE, and to write the FE exam or the confirmatory examinations potentially required of foreign applicants. These additional costs to foreign

applicants add significant financial burden. While APEGA shouldn't be expected to cover the cost for these examinations it does make the Professional Engineer designation less accessible to foreign applicants [2]. In the end APEGA's primary ethical obligation is the safety of the public and the requirements of the registration process that may make it difficult for foreign applicants to gain acceptance also enable APEGA fulfill its obligations.

References

- [1] *Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta*, 2014 AHRC, 2014.
- [2] *Association of Professional Engineerings And Geoscientists of Alberta v Mihaly*, 2016 ABQB 61, 2016.
- [3] *Mihaly v Association of Professional Engineers and Geoscientists of Alberta*, 2017 ABCA 15, 2017.
- [4] Engineers Canada, "About Accreditation," [Online]. Available: <https://engineerscanada.ca/accreditation/about-accreditation>. [Accessed 15 February 2018].
- [5] Association of Professional Engineers and Geoscientists of Alberta, "About APEGA," [Online]. Available: <https://www.apega.ca/about-apega/>. [Accessed 15 February 2018].