

ENGG 513

Mihaly Case Study

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Introduction

The purpose of this report is to study the history of the APEGA v Mihaly Case (filed 2016-2017) and the contributing stakeholders of the case in order to understand the various, possibly controversial components of engineering ethics (as an association) involved. The report will conclude with the group's opinion and stance on the case using the topics of engineering ethics such as human rights to discuss and support the ideas claimed. Firstly, the stakeholders (mainly: APEGA, The court of Queen's Bench, The Alberta Human Rights Commission) of the case will be studied to understand the individual stakeholders' roles, perspective and decision made. Then a detailed background of the case history will be studied. This will provide an insightful view on how the stakeholders interact. A further detailed study will be made on The Court of Queen's Bench decision to gain more insight into their reasonings. Lastly, the group's reflection and opinion will be discussed mainly focusing on to which extent, if at all, the group agrees to the decisions made by the stakeholders up to the conclusion of the case.

Stakeholders

APEGA

APEGA is the Association of Professional Engineers and Geoscientists in Alberta. The engineering profession was first regulated as a profession in Alberta in 1920 [5]. Each province/territory in Canada has passed a law that recognizes engineering and geoscience as a profession, and created respective Associations (or Ordres in Quebec), and APEGA is one of them. This association was made to be the licensing body responsible for maintaining and enforcing high standard of practice within the profession. This means they create and define the admission qualifications and standards of practices and disciplinary decisions for

individual professionals. Ultimately, the association prevents misuse of professional titles and practices of unqualified individuals in order to protect the safety and well being of the public [5].

The Court of Queens Bench

The Court is constituted by the Court of Queen's Bench Act and is the Superior Trial Court for the Province, hearing trials in civil and criminal matters and appeals from decisions of the Provincial Court [8]. It holds trials by judge alone. It also handles matters such as divorces, adoptions, foreclosures and bankruptcies in addition to matters relating to wills and estates. [8]. This court is higher than the Provincial Court but the Court of Appeals is the highest amongst the three. The federal government appoints justices to the Court of Queen's Bench [9].

The Alberta Human Rights Commission

In Alberta, the Alberta Human Rights Act protects Albertans from discrimination in various cases. The Act establishes the Alberta Human Rights Commission to carry out functions under the act. The Commission itself is an independent commission created by the Government of Alberta. It can independently rule on cases without having every case go to trials if sufficient evidence on the matter of the case is provided. The Minister of Justice and Solicitor General is responsible for the Commission [9].

Ladislav Mihaly

Mihaly is an immigrant that was educated and certified as an engineer in Czechoslovakia. In 1999, the individual applied for a membership to APEGA in order to work as a professional engineer in Alberta. He has failed the National Professional Practice Exam (NPPE) twice and has failed to show up once to the exam. Since then, he has been the focus of a controversial topic when the Alberta Human Rights Tribunal accepted his complaint of being discriminated

against by APEGA based on point of origin. Mihaly is one of a large portion of immigrants that apply and take appropriate exams to become a professional engineer in Alberta [1][4].

Engineering Firms/Companies

The reliability and reputation of a company is based on the quality of the work produced in their projects. This of course relies on the teams of individual engineers working on a given project. Making sure that all employees are properly trained and educated to the standards of APEGA protects the integrity and reputation of the company. An article [10] from 2014 reports that an Engineer firm was found guilty of violating building codes resulting in about \$4 million to correct the faulty work.

Public Interest

It is important to regulate foreign engineers that practice within the country because the safety and well being of the public and/or consumers could be directly affected by any mistakes of an engineer. In the example discussed in the above section, code infractions made by the firm endangered the structural integrity of the building and resulted in the evacuation of the several businesses occupying it. It can be seen how important it is to be knowledgeable of codes and regulations that pertains to structures. To avoid such shortcomings, is in the public interest for organizations like APEGA to make sure that anyone granted the title of an engineer in Alberta is qualified and meets all of the necessary standards.

Other Foreign Engineers

In a 2010 report from Ranstad Engineering, it was found that 19 percent of immigrants that were foreign trained engineers were working as professional engineers in Canada in 2006 [11]. The National Professional Practice Exam (NPPE) is a mandatory step in the application process to APEGA for any individual that was certified abroad. The NPPE evaluates the knowledge of professional practice, law, ethics, and is the last requirement prior to licensure. The conclusion of this case may affect the way future cases of similar nature are resolved.

Background

In 1999, Mr. Ladislav Mihaly, an engineer from former Czechoslovakia, applied for a P.Engg membership at the Association of Professional Engineers and Geoscientists in Alberta. Mihaly obtained a M.Sc Diploma with specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University in 1975. He then later obtained a Certificate in Corrosion Engineering from the Institute of Chemical Technology in 1981. Being a foreign trained and certified engineer, like all other applicants, Mihaly needed to prove of his engineering knowledge through the NPPE (National Professional Practice Exam). The initial conditions of acceptance to APEGA as requested by the Board of Examiners were that Mihaly must first pass NPPE, then pass three confirmatory exams and finally take a Engineering Economics course or pass an equivalent exam. Mihaly failed the NPPE exam in his first (2000), third (2002) and fourth (2003) attempts, and failed to show up to his second (2000) test. On August 2008, Mihaly filed a complaint to the AHRC stating that APEGA discriminated against him based on his place of origin. Following the complaint, on February 2014, the Tribunal agreed with Mihaly and awarded him \$10,000 in damages and also ordered APEGA to reconsider Mihaly's application with a different method of assessment. On November 2014, APEGA filed its appeal to reverse the Tribunal's decision. On January 2016, the court finalized that the Tribunal's decision is rife with logical errors and that findings are not supported by evidence and fails to consider relevant points. The court also finalized that APEGA is fair in its prescribed exams and expectations because a professional should possess the basic knowledge that pertains to their profession. "Possession of entry level engineering competence is, obviously, reasonably necessary to safe practice as a professional career" (135, Mihaly Decision). There was no evidence found that a foreign trained engineer has difficulty passing the APEGA prescribed exams, and conclusively, Justice Ross ordered to reverse the Tribunal's decisions and dismissed the case [1].

The Court of Queen's Bench Decision

The first point raised by the Appellant (APEGA) in their appeal is whether or not the Tribunal breached the rules of procedural fairness in its decision. AHRA concluded that the examinations required by APEGA was not “for the purpose of correcting a perceived academic deficiency” (55, Mihaly Decision) as required in the *Engineering and Geoscience Professions General Regulation (EGPR) section 8*. The Appellant argues that the statement was misinterpreted since it states “confirmatory examinations **or** examinations for the purpose of correcting a perceived academic deficiency”. The judge, Justice Ross, concluded that the Tribunal’s failure to ask for interpretations of the EGPR does not constitute a breach in procedural fairness.

Secondly, the Appellant questions the jurisdiction of the AHRA in the matter. “The AHRA does not protect against discrimination based upon the ‘place of origin of academic qualifications’” (60, Mihaly Decision). “The Court of Appeal had later declined to comment on the jurisdictional question” [12]. Justice Ross concluded that the Appellant has not establish that the Tribunal lacked jurisdiction and that the question would be better discussed in the issue of *prima facie* - accepted as correct until proven otherwise.

The third issue raised discusses whether or not the Tribunal applied the correct test for *prima facie* discrimination. The test applied was the Moore test, which states that “establishing a *prima facie* case of adverse effect discrimination requires complainants to show that they have a characteristic that is protected from discrimination; that they experienced an adverse impact; and that the protected characteristic was a factor in the adverse impact” (73, Mihaly Decision). There was no finding that the requirement to pass the NPPE, or the requirement for registered professional engineers to have 4 years of experience, one of which must be in Canada, constitutes an adverse impact discrimination. It was concluded that the Tribunal’s findings of *prima facie* discrimination were unreasonable.

The Tribunal ordered that APEGA “establish a committee that preferably includes engineers who received their qualifications in institutions and countries outside of Canada who have successfully integrated themselves into the engineering profession, to specifically explore and investigate options to appropriately and individually assess the qualifications of Mr. Mihaly” (144, Mihaly Decision). This was found by Justice Ross that this is beyond the scope of the alleged discriminatory conduct and was unreasonable. The Tribunal contemplated that Mihaly should be able to challenge specific examinations he has not been granted exemption from. Justice Ross concluded that the Tribunal failed to consider that Mihaly failed to even attempt the confirmatory exams or the Fundamentals of Engineering (FE) exam.

The Decision of the Tribunal was reversed. [1]

Reflection and Opinion

We believe that the AHRC’s decision to financially award Mihaly and order APEGA to reconsider his applications was unlogical. The NPPE is a mandatory step in the application process in applying to be a professional member of APEGA for any individual whom was certified abroad, even for those educated in countries which APEGA has a Mutual Recognition Agreement (MRA) with. Mr. Mihaly has failed the exam in three different attempts and failed to show up to one of his booked attempts. I believe this gives APEGA plenty of evidence to believe that Mihaly does not meet the competency to become a professional engineer member of the association. There is a high level of fairness in APEGA methods of licensing foreign engineers, for a few reasons. First, many foreign engineers are already P.Engg credited in Alberta meaning that the exams are not unreasonable in difficulty. Second, APEGA consistently revisited Mihaly’s application, even once in their own initiative so that proper exams and courses were prescribed to Mihaly. This shows that APEGA was initially supporting Mihaly’s success.

We also agree with the Court of Queen's Bench in reversing the Tribunal's initial decision. This is mainly because Justice Ross was careful and successful in finding the individual flaws in logic that was used to judge the case initially. The point we agree most with stated by Justice Ross, is that: "Possession of entry level engineering competence is, obviously, reasonably necessary to safe practice as a professional career" (135, Mihaly Decision). This supports our idea that it is indeed normal to expect individuals interested in becoming a P.Engg to meet certain levels of competency in order to serve and protect the safety and welfare of the society. This is the very reason why APEGA was formed in the first place in 1920. Aligning with the same reasons stated in support of the Court of Queen's Bench decision, we also believe that the Alberta Court of Appeal is fair in not restoring the case for another appeal.

APEGA should, and need to accommodate foreign engineers and geoscientists. We believe that foreign engineers and geoscientists are indeed necessary for Alberta, and even the Nation on a economical and social perspective. Foreign individuals can bring more than just the desire to work. They bring in skill sets, knowledge and tradition that we do not have in Canada, in fact, we cannot teach these things because it is not of our own. By bringing in their own set of skills, they can help benefit multiple industries with innovation and passion which will ultimately lift the economy up as a whole. From an improved economy, it is obvious to state that society will in turn be improved. However it is still crucial for APEGA to regulate the standards behind this and make sure that the foreign engineers and geoscientists are competent in practicing their profession in the new land. An incompetent individual in one profession will "negatively affect the ability of professions that regulate themselves including engineering, medicine, law, dentistry and accounting" (Flint, *CBC News*). APEGA should not make changes in difficulty of the application process because the standard is currently at a very reasonable place. With the current procedures (exams and courses prescribed), it correctly eliminates the incompetent individuals and ensure that reasonable expectations are set in place. It is important that no under qualified engineer raise

the possibility of compromising the integrity of capital projects, reputation of the firm/company in which he/she is associated, and ultimately the safety and well-being of society as a whole.

References

- [1] Ross, J.M. (2016). *Court of Queen's Bench of Alberta: APEGA v Mihaly, 2016 ABQB 61*. Retrieved from <http://www.apega.ca/assets/PDFs/mihaly-decision.pdf>
- [2] Jiwaji, M. (2014). *Mihaly v. APEGA, 2014 AHRC 1 (CanLII)*. Retrieved from <http://www.canlii.org/en/ab/abhrc/doc/2014/2014ahrc1/2014ahrc1.html?searchUrlHash=AAAAAQAGTWloYWx5AAAAAAE&resultIndex=2>
- [3] Cotter, J. (2017, Jan 12). Alberta Court of Appeal won't restore foreign-trained engineer's appeal. *CBC News*. Retrieved from <http://www.cbc.ca/news/canada/calgary/ladislav-mihaly-engineers-alberta-foreign-1.3933845>
- [4] Eichler, S.T. (2018). *Presentation to UofC Human Rights* [PDF document]. Retrieved from <https://d2l.ucalgary.ca/d2l/le/content/210281/viewContent/2863790/View>
- [5] Onen, D. (2018). *Chapter 1 - Introduction to the Professions* [PDF document]. Retrieved from <https://d2l.ucalgary.ca/d2l/le/content/210281/viewContent/2846876/View>

- [6] Reversal. (n.d.). Legal Dictionary. Retrieved from
<http://dictionary.law.com/Default.aspx?selected=1847>
- [7] National Post. (2014, Feb, 20). *National Post editorial board: Human rights vs. engineering*. Retrieved from
<http://nationalpost.com/opinion/national-post-editorial-board-human-rights-vs-engineering>
- [8] Moreau, M. (n.d.). *Welcome, About Court of Queen's Bench*. Retrieved from
<https://albertacourts.ca/qb/about/welcome>
- [9] Alberta Justice and Solicitor General (n.d.). *What is the difference between Provincial Court and Court of Queen's Bench?* Retrieved from
https://justice.alberta.ca/programs_services/courts/Common%20Questions%20Library%20%20Courts/WhatIsTheDifferenceBetweenProvincialCourtAndCourtOfQueensBench.aspx/DispForm.aspx?ID=3
- [10] Rassel, J.V. (2014, Nov 03). Engineering firm found guilty. *Calgary Herald*. Retrieved from
<http://www.calgaryherald.com/news/calgary/engineering+firm+found+guilty+building+problems+that+condo+evacuations/10349762/story.html>
- [11] Franner, M. (2013, Mar 6) *Alberta needs immigrant engineers, so why is it so hard to get licensed?* Retrieved from
<https://albertaventure.com/2013/03/immigrant-engineer-license-alberta/>
- [12] McKay-Pannos, L. (2016, Mar 23). *Alberta Court of Queens Bench Overturns*. Retrieved from
<https://ablawg.ca/2016/03/23/alberta-court-of-queens-bench-overturns-discrimination-decision-on-foreign-trained-engineer/>