
THE CASE OF MR. MIHALY AND APEGA

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INTRODUCTION

This report describes and analyses the case of Mr. Ladislav Mihaly, an international engineering graduate from the former Czechoslovakia who attempted to become a professional engineer in Alberta after he moved to Canada in 1999.

APEGA (the body that licences professional engineers in Alberta) reviewed his education and work experience and determined he must write “confirmatory” exams to ensure he met their academic standard. Some international applicants like Mr. Mihaly are not required to write these exams if their experience and education meets certain standards, or if they studied at school certified by the Canadian Engineering Accreditation Board.

Mr. Mihaly stated he was being discriminated against (having to write these exams), based on his “place of origin” (which is protected in the Alberta Human Rights Act). After filing a complaint with the Alberta Human Rights Commission, they awarded him 10 000 in damages. However, APEGA appealed this decision with the Court of Queen’s Bench, and the Tribunal’s decision was reversed. Mr. Mihaly appealed this reversal with the Alberta Court of Appeal, but his appeal was dismissed.

The following sections introduce the stakeholders in this case, and the events that lead to Mr. Mihaly filing a human rights complaint. Next, it will be described how the Human Rights Tribunal, the Court of Queens Bench, and Alberta Court of Appeal made their decisions on this case. Finally, an analysis of why Mr. Mihaly’s human rights complaint should not have been accepted by the Human Rights Tribunal is provided.

STAKEHOLDERS

Mr. Ladislav Mihaly

Mr. Mihaly was born in the former Czechoslovakia, where he received his engineering degree in Fuels and Thermal Energy Technology. This was later described as “chemical engineering” by the reviewers of his application. Mr. Mihaly applied to become a Professional Engineer in 1999 with APEGA after immigrating to Canada with his wife and son.

Mr. Mihaly claims he faced hardship while trying to earn a living in Canada without a professional engineering designation. In the 10 years he lived in Canada, he was unemployed for 3 and spent 5 working low-paying jobs [1]. He was unable to find meaningful engineering experience which would satisfy APEGA’s requirement for becoming a professional engineer. Mr. Mihaly is claiming that APEGA requiring him to write exams before becoming a professional engineer is discrimination based on “place of origin”.

APEGA

The Association of Professional Engineers and Geoscientists of Alberta (APEGA) regulates the professional practices of engineering and geoscience in Alberta. This is to

ensure ethical, professional, and technical competency in professional engineers to protect the public interest [2].

APEGA handles all applications for becoming a licensed professional engineer in Alberta. When an engineering student, or internationally educated graduate (IEG) applies with APEGA, they are given specific requirements to complete before they can receive their professional engineering license. For applicants whose school is recognized by the Canadian Engineering Accreditation Board (CEAB), described below, technical exams are not included in this requirement.

For applicants like Mr. Mihaly whose school is *not* recognized by the CEAB, they may be placed in the “examination” category, where several exams are required to verify their academic competency. Such applicants are reviewed by the APEGA Board of Governors, and Board of Examiners which consist of engineering academics and industry professionals. They determine, based on the work experience of the applicant, whether or not they must write these exams.

This case calls into question APEGA’s practices for reviewing IEG applicants like Mr. Mihaly. It is in their best interest to dispute Mr. Mihaly’s claim to prove that the application process is not discriminatory, and exists to protect the public interest.

All other Professional Engineering Associations in Canada

If Mr. Mihaly’s claim of discrimination to the Human Rights Tribunal were accepted by all levels of court, this would call into question the process of admitting IEG’s as professional engineers not just with APEGA, but all similar associations across Canada.

Engineers Canada

Engineers Canada is the national organization of provincial associations (like APEGA) that regulate the professional practice of engineering [3]. They maintain the Canadian Engineering Accreditation Board (CEAB), which determines if schools have an “accredited” engineering program. They use an intensive process, for University of Alberta to become accredited it was estimated to cost over 1 million [1].

They also maintain the Foreign Engineering Qualifications Committee (FEQC), which using “open source” information (like course calendars), creates a list of schools to give “a certain level of confidence in the quality of education provided” [1]. This is referred to as the Foreign Degree List (FDL). APEGA uses the FDL when assessing IEG’s, and in Mr. Mihaly’s case, his engineering degree was on this list. At the time of his application, this meant he was only required to write 3 confirmatory exams, instead of the 5 required by non-FDL applicants.

The Human Rights Tribunal was critical of the FDL in their review of the case, and deemed it “a poor substitute for directly assessing the education of IEGs” [1]. If this case was accepted by all levels of court, the fairness and usefulness of Engineers Canada’s method of evaluating international schools would be questioned.

Alberta Human Rights Commission

The Alberta Human Rights Commission is the organization that carries out functions under the Alberta Human Rights Act. These include public education, resolution or settlement of complaints, and human rights tribunals [4]. When a human rights complaint is unable to be settled, it goes to a tribunal. This is a quasi-judicial (having powers resembling those of a judge [5]) body which will order a remedy to the human rights complaint. One such remedy is compensating the complainant for any lost wages or damages [6].

The Court of Queen's Bench

The Court of Queen's Bench is the Superior Trial Court in Alberta, and it conducts judicial review of tribunal action in Alberta [7]. When APEGA appealed and Mr. Mihaly cross-appealed, the Human Rights Tribunal's decision was taken to this court.

International Engineering Graduates Coming to Canada

If Mr. Mihaly's case were to be accepted by all levels of court, the process APEGA uses to admit IEG's as professional engineers would likely be modified, as per the Human Rights Tribunal's recommendations. This would likely affect all international graduates applying to become engineers in Alberta, and possibly all of Canada.

The Canadian Public

If APEGA changed their admission standards (for example by exempting applicants from confirmatory exams), it's possible engineers who are under-qualified or incompetent might be admitted as professional engineers. If they make bad decisions or designs, it has the potential to harm the public.

BACKGROUND

Mr. Mihaly's Application to APEGA

In May 1999, Mr. Mihaly first applied to become a Professional Engineer with APEGA, and provided the following with his application:

- His Masters Diploma in Fuels and Thermal Energy Technology from the Slovak Technical University
- His Certificate in Corrosion Engineering from the Institute of Chemical Technology
- Three references from his past jobs in Czechoslovakia

APEGA acknowledged his application and requested transcripts and immigration documents. They also informed Mr. Mihaly he must write the National Professional Practice Exam (NPPE), which confirms knowledge of professionalism, law, and ethics [8].

On January 28, 2000, the board of directors reviewed his application, and determined "his experience was long but narrow" and "references were from supervisors with short

exposure” [1]. APEGA notified Mr. Mihaly that he must pass three confirmatory and one economics exam by May 2001 to be accepted as a Professional Engineer. They also informed him he failed the NPPE, which he wrote one month prior.

Mr. Mihaly applied to write the NPPE exam a second time, but did not show up, which he later blamed on a “serious car accident and bad health problems” [1]. In June 2001, APEGA cancelled his application as he failed to write the confirmatory exams by May 2001.

In May 2002, Mr. Mihaly asked APEGA to reactivate his application, which they did, this time stating he must write the confirmatory exams by November 2003. After several emails and phone calls between Mr. Mihaly and APEGA, phone notes by APEGA show that he asked to be exempted from confirmatory exams because he had 10 years of experience (this is an APEGA policy). APEGA sent Mr. Mihaly an appeal form, but he did not file an appeal.

Mr. Mihaly failed the NPPE a second time. He did not write the confirmatory exams by the new deadline of November 2003. APEGA cancelled his application once again.

In October 2006, Mr. Mihaly requested his application be reactivated for a second time, which APEGA did. He sent them an updated resume showing one year of work under a professional engineer in Calgary, Alberta. They determined this was only at the level of technician, not engineer, and he would still be required to complete one year of relevant work and write the confirmatory exams or now the Fundamentals of Engineering (FE) exam (which confirms the technical knowledge of engineering graduates commonly used in the United States) [9].

Mr. Mihaly did not write the confirmatory or NE exams and filed a complaint with the Alberta Human Rights Commission.

Tribunal by the Alberta Human Rights Commission

The Alberta Human Rights act, section 9, states that “No trade union, employers’ organization or occupational association shall... discriminate against any person or member, ... because of ... place of origin” [10]. Mr. Mihaly’s complaint is that APEGA discriminated against him by forcing him to write the academic exams based on his “place of origin”.

In his complaint, Mr. Mihaly stated he was a professional engineer in Czechoslovakia for 25 years, and that he could have worked anywhere in the European Union without re-certification. When he found out he was being treated differently than engineers from CEAB recognized countries, he refused to write the required exams.

Although the tribunal chair, Moosa Jiawaji, agreed APEGA’s standards for application are in “good faith”, he called the confirmatory exams a “one size fits all approach” that does not consider the individual applicant’s unique skills and experience. He also took issue with the way APEGA uses the FD List and deemed it a poor substitute for consulting with the applicant’s school, to determine if their engineering degree was up to Canadian

standards. “The process undertaken by the Board was not meaningful “individual assessment.””, wrote Jirwaji.

He added APEGA made no effort to assist applicants (other than a study kit) to prepare for the NPPE exam, which Mr. Mihaly failed three times.

APEGA director of registration Mark Tokarik noted engineers who immigrate to Canada are free to work towards their one year of experience, which doesn’t require an APEGA membership. He concluded APEGA played no role in whether a professional engineer could hire Mr. Mihaly. Jirwaji, on the other hand, noted that it is difficult for foreign engineers who aren’t licenced to find work that is up to APEGA’s standards.

The final decision of the tribunal was to award Mr. Mihaly 10 000 in general damages, and recommend APEGA to review Mr. Mihaly’s degrees and experience to possibly exempt him from certain exams. In addition, provide him with resources to more easily become a professional engineer. Finally, APEGA was encouraged to form a committee to re-evaluate the way they evaluate the applications of IEG’s.

The Court of Queen’s Bench

APEGA appealed the Human Rights Tribunal’s decision in 2014, and Mr. Mihaly cross-appealed asking for 1 million (or 2 million if not registered with APEGA). The appeal hearing took place in July 2015 with the Court of Queen’s Bench.

The court found the decision by the Tribunal to be problematic. They pointed out many cases of flawed logic used to show APEGA’s “discrimination” of Mr. Mihaly. They said the Tribunal’s recommendations for APEGA were “beyond the scope of any discriminatory conduct found or even alleged” [11]. The Court of Queens Bench reversed the decision of the Alberta Human Rights Tribunal.

The Alberta Court of Appeal

Mr. Mihaly filed an appeal in 2016 on the decision of the Court of Queen’s Bench. However, on January 10, 2017 it was dismissed by the Alberta Court of Appeal [12]. The court stated “[Mr. Mihaly] does not point to any patent error on the face of the decision under appeal”. He failed to follow up before the appeal was dropped in June of that year.

THE COURT OF QUEEN’S BENCH DECISION

The court reversed the decision to award Mr. Mihaly 10 000 in damages for his “discrimination” based on “place of origin” by APEGA. They pointed out the following flaws in the Tribunal’s decision.

The Human Rights Tribunal concluded the exams Mr. Mihaly had to write were not for “correcting a perceived academic deficiency” which they argue in APEGA’s guidelines is the purpose of these exams [1]. The court notes however they ignored the “or” (in section 8), which makes this one *possible* purpose, but not a *required* one.

The Tribunal concluded that in “Mr. Mihaly’s specific case, the requirements to pass the confirmatory exams, the FE, and the NPPE exams and possess one-year Canadian experience, do perpetuate disadvantage” [11]. The court notes the NPPE is required of *all* applicants, so this can’t be used to argue discrimination based on “place of origin”. For the one-year work experience, there is no evidence Mr. Mihaly’s difficulty finding employment had anything to do with his “place of origin”.

With a pass rate of 85% at the time, the court notes there is no evidence the FE exams perpetuate disadvantage. In addition, they note Mr. Mihaly never actually attempted this exam, so there is no way to prove it gave him a “disadvantage”. In fact, the court notes there is empirical evidence that the FE exams are a “valid and reliable measure of the accreditation standard”. The court agrees with APEGA in that the purpose of these exams is to test the knowledge that accredited engineering graduates are expected to possess. This is to ensure public safety, which is one of the organization’s purposes.

The Tribunal took issue with the way APEGA used the FD list to evaluate Mr. Mihaly’s education. The court notes this was actually a benefit to Mr. Mihaly, since his school *was* on this list which required him to take fewer confirmatory exams.

The Tribunal claims it is “quite difficult for most foreign engineers because they usually come early in their careers”. However, the court comments Mr. Mihaly had over 10 years experience, his experience was just not advanced enough to waive the exams. Even though Mr. Mihaly took issue with the way his work experience was evaluated he never filed an internal appeal with APEGA.

The Tribunal recommended APEGA conduct an individualized assessment of each IEG’s education and skills, instead of using standardized tests. However, the court notes this might reduce the consistency and fairness in the process. In addition, they comment that having to conduct a personalized assessment on the 375 examination candidates every year would require immense resources from APEGA.

Individually assessing each applicant’s school would be a complex and recourse-intensive process, which is unrealistic to expect from a provincial association. In fact, the court notes the reason APEGA uses the CEAB’s list of schools is because they don’t have the resources to evaluate schools on their own.

REFLECTIONS AND OPINION

Mr. Mihaly’s case caused the Alberta courts to look critically into APEGA’s process to assess IEG’s attempting to become professional engineers in Alberta. In my opinion, the decision by the Human Rights Tribunal was flawed, as it de-emphasised the importance of regulating the engineering practice, calling a proven, standardized test (the FE exam) a “one size fits all approach”. Following this, the decision to reverse the Tribunal’s ruling by the Court of Queen’s Bench was completely justified. The Alberta Court of Appeal agreed, creating a far more justified outcome than what the Tribunal originally determined.

Moosa Jiwaji, the Tribunal chair who made the decision, was set to start a second term in July 2013, which would have ended in 2016 [13]. The fact that he stopped being employed by the Human Rights Commission shortly after this case shows his controversial decision poorly represented this organization, and reduces my confidence that it was a good decision.

Awarding Mr. Mihaly 10 000 in damages because he was “discriminated” against by APEGA based on “place of origin” is not logical or justified. I agree with the Court of Queen’s Bench in the fact that all applicants must take the NPPE exam, and to mention this as part of the discrimination argument against Mr. Mihaly is invalid.

I find it strange that Mr. Mihaly went through all the trouble of filing complaints and appeals with the Alberta courts on this case, when he never even attempted *any* of the confirmatory (or NE) exams. It would improve his case by having evidence of the “difficulty” that the exams caused him. In my opinion, it is *unknown* how difficult the exams would have been for Mr. Mihaly, which makes his case of discrimination weaker.

The recommendations for APEGA from the Tribunal are unrealistic. By asking them to validate each applicant’s school individually (possibly up to the standard that the CEAB uses) would require more resources than APEGA has. In addition, they are specifically targeting APEGA here, but if Mr. Mihaly were to apply to become a professional engineer in a province other than Alberta, the process would be similar. For example, the Engineers and Geoscientists of BC’s website says the first interview of applicants “determines whether the Candidate has acquired adequate knowledge and expertise in their discipline for confirmatory or qualifying examinations to be waived” [14].

I still believe APEGA should accommodate foreign-trained engineers and geoscientists. From an academic assessment standpoint, they are doing that already. The statistics Mr. Tokarik from APEGA mentions in the Tribunal help illustrate this point: 75% of IEG applicants are not even required to write exams [1]. In addition, the FE exam had a pass rate of 73% for chemical engineering in 2017 [15]. This shows that even if the IEG applicant is selected for academic exams (the minority), they are likely to pass.

From a work experience standpoint, I think Mr. Mihaly’s struggles in finding work as an IEG are understandable. In fact, if APEGA could provide more support (perhaps something like a university’s internship program), it would make gaining the required one year of professional experience easier. Especially since moving to a new place brings its share of difficulty, assisting new immigrants to find meaningful engineering experience might make their journey of becoming a professional engineer less challenging.

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