

The Role and Responsibilities of the Professional Engineer in Society

Course Instructor: Dr. Denis Onen

ENGG 513 Case Study 1 - Ladislav Mihalý

Gloria Nemati (10139169)

Tianren Zhang (10152862)

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Introduction

This report will analyze the complaint made by Mr. Ladislav Mihaly against the Association of Professional Engineers and Geoscientists of Alberta [APEGA] and explore the judgment made by the Alberta Human Rights Tribunal [Tribunal]. On February 6, 2014, Mr. Mihaly raised a complaint that APEGA has discriminated against him in regards to recognizing him as a Professional Engineer in Alberta. Mr. Mihaly was born and educated in former Czechoslovakia where he obtained his Master of Science Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University [UBS] in 1975 and obtained a certificate in Corrosion Engineering from Institute of Chemical Technology [ICT] in 1981. Mr. Mihaly immigrated to Canada and sought to register as a Professional Engineer in Alberta in 1999. APEGA analyzed Mr. Mihaly's application and concluded he must complete the National Professional Practice Exam [NPPE] which confirms one's knowledge of law, ethics, and professionalism. In addition to the NPPE, APEGA concluded that Mr. Mihaly must also complete confirmatory examinations as well as passing an Engineering Economic course. Mr. Mihaly failed to complete the accreditation examinations by either failing the exam multiple instances or not showing up to the exam. In 2008 Mr. Mihaly took the case to the Alberta Human Rights Tribunal where in 2014 the Tribunal concluded that APEGA has discriminated against Mr. Mihaly and must pay a fine of \$10,000 in general damages in addition to appointing a personal mentor for him. The Tribunal however did not award any lost wages to Mr. Mihaly and APEGA took the case to the Court of Queen's Bench.

Stakeholders

Stakeholders are people, group, or organization that has interest or concern with this case study. As such, the following describes the key stakeholders involved in the Mihaly and APEGA case

- APEGA
This the respondent during the appeal made by the Alberta Human Rights Tribunal on Feb. 6, 2014. APEGA was also the applicant on the most recent appeal against Mr. Mihaly's complaint for APEGA discriminating against him due to his place of origin. For both case, Mr. James T. Casey, QC, was representing APEGA for the appeals.
- Mr. Ladislav Mihaly
Mr. Mihaly is the respondent at the Court of the Queen's Bench appeal, and was also the applicant for the Tribunal appeal. He was born and educated in former Czechoslovakia and later immigrated to Canada. Through a series of events, Mr. Mihaly failed to obtain his professional engineer status in Alberta and filed the original appeal against APEGA for discrimination.
- Court of the Queen's Bench of Alberta
The Court at which this case was appealed and executed. This was judged by the Honourable Madam Justice J.M. Ross. This case was heard by the course on December 12, 2014 and July 23 and 24, 2015. The judgment was made on

January 26, 2016. With both the representative of the applicant and respondent present in Court, the final decision for the appeal was made by the Court.

- Alberta Human Rights Commission

This was the Tribunal that was responsible for the original appeal made by Mr. Mihaly. For this case, the Tribunal's decision was considered as the cross-appeal. The Alberta Human Rights Tribunal is also considered as a respondent for this case. The decision of the cross appeal was made on February 6, 2014, and the decision was to award him \$10,000 in damages, have APEGA reconsider his application, and match Mr. Mihaly with relevant mentors to guide him. The Tribunal Chair was Moosa Jiwaji.

- Dean David Lynch and CEAB

He was a evidence for APEGA. Dr. Lynch is also Dean for the Faculty of Engineering at University of Alberta, and has a statutory position on APEGA's Board of Examiners. He also was a member of the Canadian Engineering Accreditation Board [CEAB] that assesses qualifications of engineering programs around the world. The assessment gives qualified engineering institutes a Mutual Recognition Agreement where the graduate does not require assigned examinations. Slovakia and Canada did not have this agreement.

- Dr. Gary Faulkner and APEGA Board of Examiners

Dr. Faulkner is also a witness of APEGA and one of the over 50 members of the Board of Examiners. This board is responsible for managing the Foreign Degree List and assigning confirmatory examinations or Fundamentals of Engineering Exams. It was judged by the Board that Mr. Mihaly's degree if only equivalent to a Bachelor's degree, and therefore requires additional examination.

- Mr. Mark Tokarik

Mr. Tokarik is also a witness for APEGA during the first appeal by the Tribunal. Mark is also the Deputy Registrar for APEGA and provided evident regarding Mr. Mihaly's application process. He testified that since Slovakia was not on the federal degree list, Mr. Mihaly was required to write five confirmatory exams or fundamentals of engineering exam. The exams can be waived if applicant has 10 or more years of experience, which was the reason Mr. Mihaly requested for it to be waived.

- Alberta Court of Appeal

After having the first appeal by Mr. Mihaly being reversed by the Queen's Bench, Mr. Mihaly filed another appeal to the Alberta Court of Appeal [ABCA] in 2016. This was then dismissed as he did not follow-up to file the appeal record.

Background

Mr. Ladislav Mihaly was born in former Czechoslovakia and attended the Slovak Technical University in Bratislava, at which he received a Diploma in Technology of Fuels and Thermal Energy in 1975. He then received Certificate in Corrosion Engineering from the Institute of Chemical Technology in 1981. Mr. Mihaly claimed that he worked as an Engineer in Slovakia until 1999, until which he then immigrated to Canada. Upon arrival, Mr. Mihaly applied for the professional engineering recognition with APEGA, and was advised to complete the NPPE, complete three confirmatory examinations, and take a course on Engineering Economic. Through a series of events, Mr. Mihaly attempted the NPPE four times, of which failed the exam three times (on January 17, 2000; July 15, 2002; and January 20, 2003) and failed to attend the exam once (on October 16, 2000). Furthermore, Mr. Mihaly did not complete any of the confirmatory examinations or courses. Finally, on August 5, 2008, Mr. Mihaly filed a complaint to the Alberta Human Rights Commission for APEGA not giving him licensing due to discriminating him for his place of origin. After the judgment was made on February 6, 2014 by the Tribunal, Mr. Mihaly was to be awarded \$10,000 for damages and a mentor to guide him through the application and examination process. On January 26, 2016, APEGA appealed to the Court of the Queen's Bench for the decision that was made by the Tribunal; which APEGA successfully reversed the Tribunal's jurisdiction. At the same time, Mr. Mihaly also made a cross-appeal for a request to receive a much greater award in damages. On January 12, 2017, Mr. Mihaly appealed to this matter once again at the Alberta Court of Appeal. This time, Mr. Mihaly failed to follow-up and provide records of the appeal, and this case was dismissed by the Court of Appeal.

Alberta Human Rights Commission

On February 6, 2014, a session was held for Mr. Mihaly's complaint to APEGA for discrimination. Moosa Jiwaji was the Tribunal chair for this appeal; Mr. Mihaly was the complainant and evidence for himself; APEGA had James Casey as representative respondent as well as three evidences. Mr. Mihaly claimed that he had over ten years of experience and should have been exempted from the exams, however, AGEPA told him that his experience were not up to their standard. Mr. Mihaly then claimed that due to him not being able to receive the licensing, his family has been under lots of pressure. The family mostly depends on the income of his wife, and he son is suffering mental issues due to their state of living. APEGA also argues that the Tribunal's act does not protect against discrimination based on the place of origin of academic qualifications. Furthermore, all three of the evidences present for APEGA, Dean Lynch, Dr. Faulkner, and Mr. Tokarik, provided support in APEGA's defense. Dean Lynch explains the process for international educated graduates for applying to APEGA, and also mentions the CEAB and Mutual Recognition Agreement. Since Slovakia did not have a MRA with APEGA, Mr. Mihaly was required to write the three confirmatory exams, or the FE exam. The examination routine was further testified by Dr. Faulkner, who is a member in the APEGA Board of Examiners. This board creates and assigns exams to the applicants who are not qualified to receive licensing and required further evidence for good character. Mr. Mihaly was of course within this category. Mr. Tokarik as the last evidence was the deputy registrar for APEGA, and explained Mr. Mihaly's application

process and requirements. The final conclusion of the Tribunal was stated that APEGA did not provide enough support to help international graduates to receive licensing, and Mr. Mihaly's family and financial state was in fact affected by the long registration barrier. Mr. Mihaly was offered \$10,000 in damages as well as being provided a mentor to help him go through the application process.

Court of the Queen's Bench

About two years after the Tribunal decision, APEGA filed an appeal to the Court to reverse the decisions made by the Tribunal. At this same event, Mr. Mihaly cross-appealed APEGA for a compensation of \$1,000,000 with licensing, or \$2,000,000 without licensing. The Court went over all the examples and discussions made at the Tribunal, and focused on four points: the procedural fairness, jurisdiction, prima facie discrimination, and justification. Mr. Mihaly once again represented himself, and James Casey was representing APEGA. Through examples of past cases that were related to this case, as well as looking back at all the evidences, the Court made several decisions. Procedural fairness and jurisdiction made by the Tribunal was ruled out of the Court's decision as it was found that the Tribunal made no mistake in these areas. However, the Tribunal's prima facie discrimination and justification were assessed to have been partially incorrect, as the Court ruled that the NPPE and application requirements were perfectly acceptable. In the final decision, the previous appeal was successfully reversed by APEGA. Mr. Mihaly's cross-appeal was also rejected as he did not continue to pursue his argument and did not provide any solid evidence for the damage loss.

Alberta Court of Appeal

In 2017, Mr. Mihaly once again filed an appeal against APEGA, and this time it was given to the Alberta Court of Appeal. However, neither the previous appeal records nor transcripts were submitted by Mr. Mihaly. Thus the case was dismissed without judgment.

The Court of Queen's Bench Decision

Following Mr. Mihaly's multiple unsuccessful attempts of accreditation examinations required by APEGA, in 2008 Mr. Mihaly filed a complaint with the Alberta Human Rights Commission. Mr. Mihaly filed that APEGA has discriminated against him based on ethnic origin due to refusing to recognize his credentials as equivalent to education offered by Canadian institutes. The Tribunal succeeded to conclude that assessment standards used by APEGA are not justified under the Alberta Human Rights Act [AHRA] therefore ordered APEGA to pay a fine of \$10,000 to Mr. Mihaly and provide a mentor to help guide him to integrate into the engineering profession in addition to requesting APEGA to reconsider his application on an "individual assessment" basis. This decision made by the Tribunal was appealed by APEGA to the Court of Queen's Bench in 2014. The Court follows standards for review for a case's reasonableness. How reasonable a decision is refers to the existence of justification, transparency and intelligibility within the decision-making process. ("Court of Queen's Bench of Alberta", par 53). APEGA raises four issues to the Court regarding the decision made by the Tribunal: procedural fairness, jurisdiction, prima facie discrimination, and justification.

The Tribunal had concluded that the examination process used by APEGA are not justified under AHRA as they are not intended for “correcting” a “perceived academic deficiency”. APEGA submits to Court that “the Tribunal has breached the duty of fairness by basing his decision on grounds that the parties did not advance, and that they were not given an opportunity to advance” (“Court of Queen's Bench of Alberta”, par 55). The Court concludes that the duty of fairness requires both parties involved to be notified of any new issues and be given a hearing. However, based on “Court of Queen's Bench of Alberta, par 57” it is determined that Courts and Tribunals do not need to provide a hearing opportunity for parties unless “new grounds” are present in a decision-making process. The Court concludes that APEGA has not successfully established a breach of the rules of fairness since issues presented in the hearing and Tribunal’s decision are the same.

APEGA submitted to the Court that the Tribunal had no jurisdiction over Mr. Mihaly’s complaint since the AHRA does not protect against discrimination based on “place of origin” of academic qualifications (“Court of Queen's Bench of Alberta”, par 60). Mr. Mihaly claims that he faces discrimination due to his place of origin. Madam Justice J.M. Ross describes that discrimination is not solely based on outlines determined by AHRA and that place of origin is not required to include or be interpreted as place of education. Furthermore, she explains that discrimination is a factor in the occurrence of an adverse impact if grounds for discrimination are present. Mr. Mihaly had made a prima facie case of adverse discrimination and the Tribunal conducted legal tests to determine its validity. The Court concludes in this case that the APEGA has been unable to establish Tribunal’s lack of jurisdiction.

Madam Justice J.M. Ross disagrees with the Tribunal's findings that claim APEGA’s policies are based on discriminatory assumptions and APEGA assumes that individuals who have accreditations from countries not under the MRA’s do not meet Canadian accreditation standards for engineers. She clarifies that the Tribunal had no reference to prove his claim of APEGA discriminating Mr. Mihaly. Madam Justice J.M. Ross mentions that the NPPE exams are a valid test for all applicants to register as a Professional Engineer in Alberta. The exam must also be taken by all individuals, regardless of their place of education, if they do not meet accreditation requirements which as discussed are not based on discriminatory assumptions. Mr. Mihaly had failed the NPPE and the Court finds no evidence that his inability to complete accreditation requirements is due to his place of origin. Mihaly also alleged that he had difficulty finding a job without being registered as a Professional Engineer, however, no valid evidence is found by the Court to suggest his difficulty finding a job is due to his place of origin. The Court concludes that the Tribunal has failed to successfully prove the NPPE exam and Canadian experience requirements are unreasonable.

The Tribunal claimed that APEGA did not accommodate Mr. Mihaly and his application for professional engineering. However, the Tribunal failed to demonstrate that the accreditation process taken by APEGA is unreasonable under the AHRA and therefore the final decision by the Court of Queen’s Bench was to have the Tribunal’s decision be reversed.

Reflection and Opinion

Decision of Alberta Human Rights Commission and Court of Queen's Bench

We believe that the decisions made by the AHRC and Court of Queen's Bench were both reasonable and correct at their perspective times of trial. As such that the Tribunal had a focus on damages to Mr. Mihaly, and the Court had a more logical focus on relevant policies and prior case examples.

The final decision made by the Human Rights Commission was to award Mr. Mihaly with \$10,000 in damages and to provide a mentor to guide Mr. Mihaly through his application. In terms of the arguments that were discussed by the Tribunal, this was a fair offer to Mr. Mihaly at the time. As the Human Rights Commission, it was important for them to consider the hardships of many immigrants to Canada. Adapting into a new lifestyle and living environment is already challenging enough for a new immigrant. And often times, they also have a language barrier. One of the main justifications was that APEGA is not providing enough support for these immigrants to receive their licensing. Furthermore, Mr. Mihaly's family was also impacted by the state that Mr. Mihaly was in, since they acquired most of their money from his wife's salary. Thus, in the interest of the Human Rights Commission, the award for providing a suitable mentor for Mr. Mihaly, we very much agree with.

We also agree with the decision of the Court of Queen's Bench to reverse the initial appeal. The focus for the Court was more leaned towards the written policies and facts. It was clearly proven that Mr. Mihaly did not have the requirements to become a Professional Engineer in Alberta. Not only was Mr. Mihaly's education and experience not matching Alberta's standards, he also failed the NPPE three times. A qualified engineer would have had no problems passing the 85 percent exam passing mark. As Mr. Tokarik has explained in the Tribunal, all the foreign graduates go through the same process in applying for APEGA and are assessed the same. Furthermore, Mr. Mihaly's character of not showing up to exams and not providing necessary documents shows that he would not have been a competent engineer. Finally, APEGA is not responsible for whether or not Mr. Mihaly finds an engineering job, thus the \$2,000,000 compensation cross-appeal was turned out rightfully. Thus, we fully support the reversal of the appeal by the Queen's Bench.

Accommodation of foreign graduated engineers

As a regulatory association based in a country that values and prioritizes diversity, it is crucial to accommodate foreign-trained engineers and geoscientists. It is important however to establish rules and regulations that provide equal opportunities for both Canadian and foreign-trained engineers and geoscientists. APEGA has several methods to verify the knowledge of a foreign-trained individual which is very valuable since these individuals often can bring new knowledge to the society. APEGA and similar organizations would benefit from regularly reviewing and updating their accommodation process to ensure that it is up to world standards. Canadian and foreign-trained engineers and geoscientists however should all go through the same validation process to ensure that a common standard is in place for everybody. The goal is to prioritize public safety and by providing an equal accreditation process,

APEGA can ensure safety remains the number of priority. Regularly maintaining contact with universities world-wide and obtaining curriculum outlines can help accommodate foreign-trained individuals better. In situations where information about a university is not available to APEGA, it is best to do a case-by-case analysis for the individual and provide mentors and support to ensure that accreditation process is fair and successful.

References

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