

ENGG 513

Mr. Mihaly vs. APEGA Report

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Introduction

This Report studies the case of Mr. Ladislav Mihaly versus the Association of Professional Engineers and Geoscientists of Alberta (APEGA). Mr. Mihaly claimed that he was discriminated against by APEGA, and legal action was pursued. The Purpose of this report is to describe how this case unfolded, to look at APEGA's requirements to become registered as a professional engineer, and to reflect on whether I agree with the outcome of the case.

Stakeholders

The first major stakeholder in this case would be Mr. Ladislav Mihaly. Mihaly was born in the former Czechoslovakia, and has two masters degrees in engineering related fields from that country. He first applied to become registered as a professional engineer through APEGA in 1999, after moving to Canada. He failed the National Professional Practice Exam (NPPE) three times, after which he filed a complaint with the Alberta Human Rights Commission in 2008 saying that APEGA had discriminated against him. He was a self represented complainant in the Human Rights Tribunal in 2014, and he was a respondent in the Court of Queen's Bench of Alberta in 2016.

The second key stakeholder associated with this issue would be the Association of Professional Engineers and Geoscientists of Alberta, abbreviated as APEGA. They are a professional regulatory organization for the engineering profession in Alberta. An individual must be approved by APEGA for registration as a Professional Engineer before they can be allowed to practice engineering. APEGA has a Board of Examiners, who may require applicants to pass

certain exams or to obtain more experience before they can be registered. They were the respondent to Mr. Mihaly's complaint in the Alberta Human Rights Tribunal, after which they appealed to the Court of Queen's Bench of Alberta.

Another important stakeholder in this case is the Alberta Human Rights Commission. It was with them that Mr. Mihaly filed his complaint against APEGA. They came to a decision about this complaint, rewarding Mr. Mihaly and ordering certain actions to be taken by APEGA.

An additional stakeholder in this issue is the Court of Queen's Bench of Alberta. Disagreeing with the Tribunal's decision, APEGA appealed to the Court against it. Mr. Mihaly also asked for a cross-appeal.

An additional stakeholder is the Court of Appeal of Alberta. After the decision of the Court of Queen's Bench, Mr. Mihaly applied to the Court of Appeal to have the Queen's Bench decision reconsidered.

Another stakeholder could be Mr. Mihaly's family. Mr. Mihaly had claimed that they had been negatively affected by his rejection for registration as a professional engineer.

Another stakeholder could be practicing engineers and geoscientists, and people who are apply for or at some point will apply for registration with APEGA. This affects them because the decisions of the courts would impact them as members of the profession, and also the registration requirements could be altered.

Background

As previously mentioned, Mr. Ladislav Mihaly, having obtained two degrees from Czechoslovakia, applied to be registered as a professional engineer by APEGA. He was informed by APEGA that he was required to write the National Professional Practice Exam. The passing of the NPPE is one of APEGA's requirements for all applicants. After looking over Mr. Mihaly's transcripts, references, and experience, the Board of Examiners told him that he would also be required to write three additional examinations, as well as take a course or pass an equivalent exam. He was also told that he had failed his first attempt at the NPPE. Over the following years, Mr. Mihaly reactivated his application twice, failed the NPPE two more times, and did not write the additional exams. He was also told he needed a sufficient year of North American engineering experience as well. In 2008 after all of this, Mr. Mihaly filed a complaint with the Alberta Human Rights Commission alleging that APEGA discriminated against him when he was denied registration as a Professional Engineer. He complained that APEGA's requirements for him to become registered as a Professional Engineer were contrary to the Alberta Human Rights Act.

Furthermore, Mr. Mihaly's complaint went to court in the Human Rights Tribunals of Alberta. Mr. Mihaly represented himself, and APEGA was represented by a lawyer, with Dean David Lynch, Dr. Gary Faulkner, and Mr. Mark Tokarik appearing on behalf of APEGA as witnesses. The Tribunal ruled in favour of Mr. Mihaly and found that APEGA's assessment of him did in fact constitute discrimination. Mr. Mihaly was awarded \$10,000.00 for general damages. APEGA was ordered to review Mr. Mihaly's transcripts and experience with consultation of his former universities and references, grant him the option to challenge specific exams, establish a committee to investigate options to assess Mr. Mihaly's qualifications and correct any academic

deficiencies, to match him with a mentor with a similar background to offer him guidance, to direct him resources to allow him to network with others facing similar challenges, and finally, to direct him to resources to assist him in the use of the English Language.

Following the Tribunal, APEGA immediately appealed against its decision to the Court of Queen's Bench of Alberta. Mr. Mihaly also cross-appealed the Tribunal's decision, as he was unsatisfied with the sum he was paid in damages. After review by the Court of Queen's Bench, it was concluded that the Tribunal's decision should be reversed, and there would be no need to remit the case back to the Tribunal. Mr. Mihaly's cross appeal was also dismissed.

Mr. Mihaly then filed an application to the Court of Appeal of Alberta to have the decision of the Court of Queen's Bench reconsidered. However, Mr. Mihaly's application to restore the appeal was dismissed. After considering the relevant factors, the Court of Appeal determined that the application did not have enough merit to restore the appeal.

The Court of Queen's Bench Decision

As summarized in the previous section, an appeal was brought forward by APEGA to the Court of Queen's Bench for the reversal the decision of the Alberta Human Rights Tribunal, which ruled against APEGA. In Mr. Mihaly's cross-appeal, he asked for a greater payment of damages for the loss of income cause by his rejection by APEGA. He sought out payment of \$1,000,000.00 and registration with APEGA, or, double the amount of money paid if he is not registered. Ultimately, the Queen's Bench ruled in favour of APEGA, reversing the order of the Tribunal, and dismissing the cross-appeal. The Queen's Bench found that the orders given to

APEGA by the Tribunal went above and beyond what would normally be required in a discriminatory conduct case. It was also noted that the implementation of some of these orders would realistically have a higher cost for APEGA than the Tribunal had assessed. The Queen's Bench addressed that the requirements to be registered with APEGA are to assure the competence of professional engineers at a level expected from a graduate of a Canadian University, to ensure public safety. Also addressed was how this accommodation would impact APEGA, as it would require the regulatory body to act outside of its set role and alter its mandate. Furthermore, the Queen's Bench points out that the responsibility of searching for accommodations and resources should be the obligation of Mr. Mihaly, as this again would cause APEGA to act outside of role. It also could not be supported that APEGA had the abilities to accommodate Mr. Mihaly. The Queen's Bench determined, that the Tribunal's decision in favour of Mr. Mihaly was not supported by sufficient evidence, as opposed to the undisputed evidence offered by APEGA's argument. The Queen's Bench found the Tribunal's conclusion to be unreasonable and unjustified, reversed the original decision, and thus ruled that APEGA would not have to do what the Tribunal ordered.

Reflection and Opinion

In short, Mr. Mihaly, having immigrated to Canada, applied for registration as a professional engineer several times but failed to meet APEGA's requirements. He then complained to the Alberta Human Rights Commission that he was discriminated against by APEGA, resulting in the Tribunal ruling in Mr. Mihaly's favour, and requiring action to be taken by APEGA. APEGA

appealed this decision to the Court of Queen's Bench of Alberta, where the case was reviewed, and the decision was reversed in APEGA's favour. Mr. Mihaly then applied to the Alberta Court of Appeal and attempted to have the Queen's Bench decision reconsidered, but to no avail. This is the process that has taken place to date.

I do not agree with the decisions of the Alberta Human Rights Commission. In my opinion, they did not do a good job of solving the issue, as their remedy, had it not been appealed, would have forced APEGA to make fundamental changes to some of their standards. The role of APEGA is to act as the professional regulatory body for engineers in Alberta. The established requirements APEGA has that one needs to complete to become registered as a professional engineer are designed with the public's best interests in mind. Meaning, applicants must demonstrate that they possess a certain competence to ensure that they would not cause or be a danger to public safety if they were to practice engineering. If APEGA was forced to make changes to their requirements, such as through certain accommodations, there is a higher chance that the required level of competence that needs to be proven to practice engineering could become lower, and thus there is a risk to the safety of the public.

Furthermore, I do agree with the decisions of the Court of Queen's Bench and the Alberta Court of Appeal. I agree with the conclusion to reverse the Tribunal's decision for the same reasons I disagreed with the Tribunal's decisions. The Queen's Bench recognized that forcing APEGA to change their standards would also mean lowering the acceptable quality of practicing engineers. I also agree with their statement that it is not the role of APEGA to provide or search for resources to help applicants meet their requirements. Additionally, I believe that the Queen's Bench did a better job than the Tribunal in terms of reaching their decisions. It

seemed, in my opinion, that the Queen's Bench was able to more clearly take into consideration the evidence offered by APEGA, and overall come to a more realistic and reasonable conclusion. I think the Alberta Court of Appeal decision was good, as it leaves the Queen's Bench decision standing.

To continue, I do not think that APEGA should accommodate foreign-trained engineers and geoscientists. I do believe that there should be resources available to foreign-trained APEGA applicants to assist them in completing the registration requirements; however, I do not think that it should fall within the role of APEGA to offer this. In my opinion, there should be resources available offered by sources outside of APEGA to help them succeed, without being accommodated. As there are potentially different standards for practicing engineering and geoscience in parts of the world outside of Canada, it makes sense to me that foreign-trained people wishing to work in Canada meet Canadian standards. I feel like the established standards APEGA has is good, and necessary to ensure that all approved applicants are completely capable. In conclusion, I agree with APEGA in the case against Mr. Mihaly, and I do not think that APEGA should have to provide any exemptions or accommodations to anyone, regarding its requirements.

References

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