

ENGG 513

The Role and Responsibilities of the Professional Engineer in Society

“A Case Study on Ladislav Mihaly vs APEGA”

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Introduction:

This report is being prepared as a case study on the Court of Queen's Bench decision on APEGA vs. Mr. Ladislav Mihaly. The purpose of this report is to obtain a greater awareness on the process of becoming a registered Professional Engineer in Alberta, as well as APEGA's regulations, processes, and legal environment.

These legal proceedings began after Mr. Mihaly filed a complaint with the Alberta Human Rights Commission that he had been discriminated against by APEGA. The grounds of this complaint are that they did not recognize his engineering education in the former Czechoslovakia in the way they recognize accredited Canadian Universities or Foreign Universities who have established a Mutual Recognition Agreement with Canada. The Commission appointed a Tribunal to handle this complaint (For the sake of the clarity in this report, the Tribunal appointed by the Alberta Human Rights Commission will be referred to as 'The Commission', as that is who he represents). Initially, the Commission found that Mr. Mihaly had proven he had been discriminated against and awarded \$10,000 and reconsideration of his application. However, APEGA appealed the decision and a Court of Queen's Bench Justice reversed the Commission's decision [2]. The Alberta Court of Appeals would also dismiss Mr. Mihaly's appeal to this reversal [6]. The details of the legal proceedings will be discussed further in this report.

Stakeholders

APEGA, The Association of Professional Engineers and Geoscientists of Alberta:

APEGA represents the government of Alberta in regulating the practice of engineering and geoscience within the province. This association is responsible for "licensing qualified individuals and companies to practice as well as to outline the code of conduct required of practicing members and discipline those who fail to meet it" [3]. APEGA is a key stake holder in this situation as they were in charge of reviewing Mr. Mihaly's application. APEGA is responsible to the public to only license qualified professionals and they felt that without writing the recommended exams they could not license Mr. Mihaly. The complaint Mr. Mihaly filed to the Human Rights Commission is against the Association and its decision.

The Court of Queen's Bench:

As the Superior Trial Court of Alberta it is the Court of Queen's Bench responsibility to hear trial in criminal and civil matters as well as appeals on Provincial Court decisions [4]. In this case, the Court of Queen's Bench was responsible for hearing APEGA's appeal of the Human Rights Commission's decision and decide if APEGA truly did act discriminately or if they were within their rights to request that Mr. Mihaly pass several qualification exams as part of his application to be licensed as a Professional Engineer. The Court would eventually determine that APEGA did not discriminate and reverse the decision of the Alberta Human Rights Commission [2].

The Alberta Human Rights Commission:

The Alberta Human Rights Commission is responsible for enforcing the Alberta Human Rights Act. This Act protects Albertans from discrimination and ensures all Albertans have an “equal opportunity to earn a living, find a place to live, and enjoy services available to the public”. In this case Mr. Mihaly felt he was being discriminated against because of his place of origin when APEGA refused to recognize his engineering education without completing several exams. It was therefore the responsibility of the Commission to investigate Mr. Mihaly’s case and determine if he had truly been discriminated against, i.e. did APEGA violate the Act? The Commission decided he was discriminated against but this decision would ultimately be overturned.

Mr. Ladislav Mihaly:

Ladislav Mihaly was educated as an engineer in the former Czechoslovakia and applied unsuccessfully to be licensed as an engineer in Alberta [1]. He is a key stakeholder in this case because it revolves around his complaint of discrimination to the Alberta Human Rights Commission. His career as an engineer in Alberta is dependent on the outcome of this complaint. Although his complaint was initially ruled in his favor, the Court of Queen’s Bench would reverse the decision.

The Public:

The Alberta Public is a stakeholder in this case because Professional Engineers are responsible for their safety and wellbeing as well as their environment’s wellbeing. If APEGA can’t guarantee an engineer they license has all of the proper qualifications and knowledge then public safety is jeopardized.

Potential Employers:

Companies and corporations operating in Alberta trust that APEGA does its due diligence when licensing a Professional Engineer and ensures that the individual is capable and qualified to act as one. This makes all companies that hire engineers in Alberta a stakeholder in this case because they are potential employers of Mr. Ladislav. If they hire an employee based on the assumption that as a licensed Professional Engineer, they are capable and qualified to do the job then their safety, operations, and public image are put at risk.

Foreign Degree Holders

Other foreign degree holders who wish to apply for licensing as a Professional Engineer in Alberta are stakeholders in this case. The decision of this case will act as a precedence for future cases and allow other foreign degree holders to also file complaints of discrimination in order to circumvent writing the required exams. Although this may be helpful to foreign degree holders

with experience in becoming licensed in Alberta it also has the potential to undermine the integrity of APEGA and the title of Professional Engineer.

Background

Mr. Ladislav Mihaly was born, raised, and educated as an engineer in the former Czechoslovakia. In 1975 he attended the Slovak Technical University in Bratislava and received a Master's of Science Diploma with a Specialization in Technology of Fuels and Thermal Energy. Then, in 1981, he attended the Institute of Chemical Technology in Prague and received a Certificate in Corrosion Engineering [1].

After his education in the former Czechoslovakia, Mr. Mihaly immigrated to Canada and in 1999 applied to be licensed as a Professional Engineer by APEGA (the engineering and geoscience regulatory body in Alberta). APEGA informed Mr. Mihaly that since he did not receive his education at an accredited Canadian University nor a University that had a Mutual Recognition Agreement (MRA) in place with APEGA, he would have to write the National Professional Practice Exam (NPPE). In January of 2000, Mr. Mihaly attempted the NPPE for the first time and failed. After this, APEGA informed him he would need to not only pass the NPPE, he would also have to pass three other exams to confirm his qualifications/abilities and either take a course or pass an exam on engineering economics by May of 2001 [1].

This began a repeated cycle of Mr. Mihaly unsuccessfully attempting to write the NPPE (either from failing to attend the exam or for failing it), APEGA closing his application for not meeting the established criteria to receive licensing as a Professional Engineer, and Mr. Mihaly reactivating his application. This cycle repeated three times until finally on the third time, instead of attempting the NPPE Mr. Mihaly instead filed a complaint with the Alberta Human Rights Commission. The grounds for Mr. Mihaly's complaint was that by failing to recognize his education and experience in the former Czechoslovakia and license him as a Professional Engineer, APEGA had discriminated against him based on his place of origin.

The Alberta Human Rights Commission, who is responsible for enforcing the Alberta Human Rights Act, allowed Mr. Mihaly to explain his case and demonstrate how he was discriminated against. At the end of this process the Commission decided that Mr. Mihaly had succeeded in proving that he had been discriminated against, particularly by APEGA's Examination Standard and Experience Standard. The Commission ruled that for violating the Mr. Mihaly's rights, set out by the Alberta Human Rights Act, APEGA must pay \$10,000 in damages to Mr. Mihaly and reconsider his application with a more individualized approach, including possibilities for examination exemption and a personal mentor to integrate him into the engineering profession in Alberta [1]. The Commission also suggested that APEGA become more proactive in setting up Mutual Recognition Agreements with other institutions in more countries throughout the world. However this would require a significant amount of time and resources. Currently, APEGA relies on the Canadian Engineering Accreditation Board (CEAB) to set up these agreements and investigate the quality of foreign institutions [1].

Following this decision APEGA filed an appeal with the Court of Queen's Bench against the decision of the Alberta Human Rights Commission. In January of 2016, after hearing the case put forth against APEGA, Justice June Ross reversed the decision of the Commission [5], stating "The tribunal's reasons leading to (the chairman's) conclusion that APEGA could have accommodated Mr. Mihaly and others sharing his characteristics are rife with logical errors, findings of fact that are not supported by evidence and failures to take into account relevant considerations" [1]. This decision came as quite a relief to APEGA, its CEO Mark Flint, believes this decision will help ensure public safety and that if the decision had not been reversed it would have negatively impacted a professions ability to regulate itself, this includes all regulated professions, such as dentistry and law, not just engineering [5].

After the Commission's decision was overturned, Mr. Mihaly filed an appeal to the Alberta Court of Appeal. This appeal was first dropped in June of 2014, when Mr. Mihaly failed to follow up and then dismissed completely following his attempts to restore his appeal in December of 2016. Justice Frans Slater, who handled the appeal, believed "the appellant does not point to any patent error on the face of the decision under appeal" [6] and pointed out that "Even Canadian educational institutions must demonstrate the equivalency of their programs, and Canadians who receive foreign training must also demonstrate equivalency" [6].

The Court of Queen's Bench Decision

This section of the report will outline in greater detail; the specifics of APEGA's appeal and The Court of Queen's Bench decision.

The Commission's decision that APEGA had discriminated against Mr. Mihaly was upgraded to the Alberta judicial system on November 20, 2014, when APEGA filed its appeal with The Court of Queen's Bench. Mr. Mihaly, who represented himself during these proceedings issued a response the same day. The appeal hearing was scheduled for December 12, 2014 but was delayed because the court requested the Alberta Human Rights Commission to provide a statement regarding 3 legal issues: "the impact of this Court's decision in *Grover vs. Alberta*, the test for *prima facie* discrimination, and the test for defence of a *bona fide* occupational requirement" [1]. The Commission filed their Response on March 19, 2015, and after both APEGA and Mr. Mihaly filed replies on April 10, 2015 the hearing was scheduled to begin on July 23, 2015. The hearing would take 2 days [1].

APEGA's appeal centered around 4 main issues:

- 1.) Procedural Fairness – meaning was it fair for the Commission to decide on issues that both parties did not have a chance to defend or comment.
- 2.) Jurisdiction – APEGA argued that the Commission was not justified in deciding that where a person receives their education counted as, "place of origin" and therefore should not have counted as discrimination.

- 3.) Prima Facie Discrimination – APEGA inquired if the Commission applied the test for discrimination correctly and were they justified in taking this decision as correct until proven otherwise.
- 4.) Justification – did the Commission believe that APEGA’s requirements to become a licensed professional are unreasonable?

After hearing the arguments from each side of the case, Justice June Ross, the representative judge for The Court of Queen’s Bench declared findings on each of the issues raised by APEGA. These findings are as follows:

In terms of procedural fairness, Justice Ross decided that although it would have been ideal for the Commission to question APEGA on the complaint of discrimination raised by Mr. Mihaly, it was not required to do so. Justice Ross also added that APEGA had adequate time and opportunity to respond to this complaint and the evidence brought against them [1].

In terms of Jurisdiction, Justice Ross found that since Mr. Mihaly was born, raised, and educated in his homeland of the former Czechoslovakia and could not have reasonably travelled elsewhere for education that his place of education is linked to his place of origin and therefore the Commission was within their jurisdiction [1].

The Alberta Human Rights Act states that, “No person shall discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public, because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons.” Although Justice Ross conceded that many immigrants due face discrimination when looking for employment in their trained field, she stated that in Mr. Mihaly’s case APEGA did not act based on a prejudice of his place of origin, it acted on a lack of information [1]. Mutual Recognition agreements between the CEAB and foreign universities are not established based on the assumption that certain schools are better qualified because of the country they are located. They are established by a thorough inspection of the program and much resources devoted by both parties. In this particular case, APEGA had no information on the programs Mr. Mihaly attended so they had no choice but to issue exams to confirm his knowledge.

Lastly, on the issue of whether or not APEGA’s requirements to become licensed engineer are unreasonable Justice Ross determined that there was no evidence to suggest that internationally education students should have unnecessary difficulty in passing the required exams. In fact, the NPPE has a success rate of 85% in Alberta and those who fail can rewrite the test [1]. She decided that since APEGA has the duty to safeguard public interest it was well within its rights to assign an examination to Mr. Mihaly to assess the quality of the engineering programs he attended as well as the engineering knowledge he retained from those programs.

For the reasons outlined above Justice Ross reversed the Commission's decision that APEGA must pay damages of \$10,000 to Mr. Mihaly and reinvestigate his application with a more individualized approach [5].

Reflection and Opinion

After studying the case of Mr. Ladislav Mihaly vs APEGA closely, I find myself agreeing with the decision with The Court of Queen's Bench and the Appeals Court of Alberta. I believe the integrity and the public trust in the title of Professional Engineer needs to be upheld by ensuring that this title is only bestowed upon qualified persons. Professional Engineers, as defined by the APEGA code of ethics, "hold paramount the health safety, and welfare of the public and have regard for the environment" [3]. This responsibility is far too important to be awarded to anyone without definite proof that they are capable of preserving the public interest and well-being.

I am not however saying that Mr. Mihaly does not have the necessary knowledge and skills to be an effective Professional Engineer. I just believe that without definitive proof that the education he received in the former Czechoslovakia is comparable to the education we receive in Canadian accredited universities it would be unsafe to award him the title of Professional Engineer. I believe that if Mr. Mihaly successfully completes the required examinations and courses assigned to his application by APEGA than he has proven himself and would make an excellent Professional Engineer and an assist to his industry.

I approve of The Court of Queen's Bench decision to reverse the Alberta Human Rights Commission's decision because I feel they did not take into consideration that APEGA must first and foremost protect the people of Alberta and their environment.

I also approve of the Alberta Court of Appeal's decision to dismiss Mr. Mihaly's appeal because I think he was treated fairly in a court of law, all of the evidence and similar cases were considered and the judge made the fair and correct decision to reverse the decision. For this reason I feel Mr. Mihaly has no grounds for appeal.

APEGA should accommodate for foreign trained engineers and geoscientists because diversity will strengthen the profession. Global engineers will have different methods for accomplishing tasks and by exposing Alberta engineers to more of these methods our engineers will be better equipped to handle any situation. APEGA should have a more individualized approach for foreign trained engineers to become licensed in Alberta by assigning candidates an advisor who can examine their skills and experience and help them through the application process. I believe this will help applicants to overcome any confusion on how to become licensed, especially if a language barrier is involved. This will also help ensure that all foreign applicants have their previous education and experience properly assessed and eliminate the need for standardized examinations when an engineer has already proven their qualifications.

Although I understand changing to a more individualized approach to accommodating foreign engineers will involve a significant increase in the required resources, I believe the added benefits

will outweigh this cost. By allowing more engineers a fair chance to become licensed as a Professional Engineer in Alberta I believe our industry will have a wider range of trained professionals to choose from which will improve the quality of work produced by the engineering profession.

References

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- [6]J. Cotter, "Alberta Court of Appeal won't restore foreign-trained engineer's appeal", *CBC News*, 2017. [Online]. Available: <http://www.cbc.ca/news/canada/calgary/ladislav-mihaly-engineers-alberta-foreign-1.3933845>. [Accessed: 06- Feb- 2018].