

ENGG 513 L01 W2018
Mihaly VS. APEGA Case Study
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Introduction

This report will examine the requirements and qualifications associated with becoming a registered professional engineer in Alberta, specifically known as the Association of Professional Engineers and Geoscientists of Alberta (APEGA). Specifically, this case study will explore the standardized regulatory process used by APEGA to determine qualifications of an applicant before registering as a professional engineer, focusing on foreign applicants and the legal impacts that this process upholds.

The focus of this case study will detail the appeal made by Alberta Human Rights Commission (AHRC) and Mr. Ladislav Mihaly on alleged discrimination in APEGA's approach to reviewing a foreign applicant based on their country of origin. It will also analyze the cross-appeal made by APEGA to show that discrimination is an unfair ruling made by AHRC. Additionally, this report details the ultimate ruling on both appeals made by the Court of Queen's Bench, Madam Justice Ross to reverse the appeal made by AHRC towards APEGA.

Stakeholders

A. Mr. Ladislav Mihaly

Mr. Ladislav Mihaly is a trained engineer with two different degrees, and has a track-record with many years of experience in a foreign country. However, since his work environment originates from a foreign country, APEGA has deemed him as an "unqualified" professional engineer as the standards and education are different from APEGA's requirements. Mr. Mihaly is in disagreement with the association's methods of assessments and regards it as discrimination due to his country of origin.

B. APEGA

APEGA has followed regulations and its upheld methods of fair assessments to evaluate foreign applicant's education qualifications strictly following the Foreign Degree List created by the Canadian Council of Professional Engineers. The requirements asked by APEGA is determined accordingly to the FD List and this have been the same methods for all foreign applicants, without discrimination in assessments. The primary reason Mr. Mihaly was not granted registration was because he was unable to pass the APEGA exams, and therefore did not fulfill the requirements.

C. AHRC

AHRC appealed that APEGA's methods in assessment of foreign trained engineers was considered unjustified discrimination. With the complaint from Mr. Mihaly, several sections of the Human Rights Act were in violation. AHRC demanded that in order to make necessary actions to remedy the issue, APEGA was to provide compensation to Mr. Mihaly. Such compensation included; a \$10000 award in general damages, the establishment of a committee that individually assessed Mr. Mihaly's qualifications and the provision a Mentor for Mr. Mihaly to gradually integrate into the profession.

D. Court of Queen's Bench

The Court of Queen's Bench cross-appealed that the remedies of which AHRC requested was not viable. The findings of the Tribunal were not supported with evidence to confirm its liability. As well, making such demands as a form of remedying the issue at hand was unnecessary and unfair to APEGA. Through careful consideration and review, it was decided that the Tribunal should be reversed as the alleged discrimination against a foreign applicant is not supported nor deemed confirmed with the provided analysis.

E. Other Foreign Applicants

There are many engineers trained in foreign countries that seek opportunities in Canada because it is broadly known as a multicultural nation. Organizations which represent Canada should not be using any form of discrimination against any foreign individual.

F. Registered Professional Engineers

While the possibilities of "discrimination" may exist, the rest of the registered professional engineers have met the standards and requirements requested by the APEGA to be officially given the title of P.Eng. Giving "special treatment" to those who are not accustomed to the standards of professional environment in Canada, appears biased. It is an unfair treatment against other professional engineers that were approved by the same organization under the same assessment regulations.

G. The Public

It is unfortunate that the standards and education differ in Alberta in comparison to foreign countries, however there are rules and regulations to follow to become a

registered professional engineer in Alberta. These rules and regulations have been upheld and trusted by the public that it is safe to trust the credibility of a registered professional engineer and that the public can rely on the practices and services provided by such engineer.

Background

A. Mr. Ladislav Mihaly

First Attempt

Mr. Ladislav Mihaly was educated in former Czechoslovakia with a Masters degree in “Technology of Fuels and Thermal Energy” ^[1] and a “Certificate in Corrosion Engineering”. ^[1] In 1999, Mr. Mihaly applied to APEGA for registration as Professional Engineer after immigrating to Canada. After reviewing Mr. Mihaly’s application and supporting documents, APEGA’s Board of Examiners notified him that he must pass the National Professional Practice Exam (NPPE), three confirmatory exams, and must take a course in Engineering Economics or an equivalent by May 2001.^[1] Mr. Mihaly failed his first attempt at the NPPE, and have applied at a later date for a second attempt. He did not attend the exam. APEGA has informed Mr. Mihaly that his application was deactivated due to not meeting the requirements outlined by the specified date.

Second Attempt

In 2002, Mr. Mihaly asked APEGA to reactivate his application and explained that he was unresponsive due to a vehicle accident seriously affecting his health. APEGA reactivated his application and notified him that he must still pass the three confirmatory exams and the Engineering Economics before May and November 2003, respectively. Mr. Mihaly failed his attempt at the NPPE, and have contacted APEGA regarding his recent information that Masters degree from his country of origin was not up to par with a Bachelors degree in Alberta. ^[2] APEGA has revealed to him that his assessments were given accordingly, based on the Foreign Degree List, set out by the Canadian Council of Professional Engineers. Mr. Mihaly was also informed that if his institution was not on the FD list, he would have nine confirmatory exams instead. After not being able to meet the requirements, his application was deactivated the second time.

Third Attempt

In 2006, Mr. Mihaly requested APEGA to reactivate his application, and APEGA notified him of reactivation of the application, also requesting updated resume and list of references, with the similar conditions that he must pass the three confirmatory exams and a course in Engineering Economics, or the Fundamentals of Engineering Examination. APEGA's Board of Examiners later determined that Mr. Mihaly did not meet the requirement of one year of D-level engineering experience and therefore further requested that he must do so. Mr. Mihaly did not write the exam and have filed a complaint with the AHRC.

B. Alberta Human Rights Commission

As Mr. Mihaly filed a complaint, following violations were made according to his complaint;

- Section 4 of the Act, *"No person shall (b) discriminate against any person...respect to any goods, services, accommodations, facilities that are customarily available to the public because of the race, ...place of origin..."* [2]
- Section 7 of the Act, *"No employer shall (b) discriminate against any person with regard to employment or any term or condition of employment because of race, ... place of origin..."* [2]
- Section 9 of the Act, *"No trade union, employers' organization...shall (c) discriminate against any person or member because of race, ... place of origin..."*

Under the review and analysis, Tribunal (Commission) concluded that Act 4 and Act 9 was in clear violation with the following analysis;

- *" The relationship at issue in this case is between APEGGA and the Mr. Mihaly and the service being provided by APEGGA can be described as registration or the right to practice engineering in Alberta."* (Tab 31 [2])
- *" The issue for Mr. Mihaly is that he is unable to practice as an Engineer without a licence and that he is being denied an opportunity to earn a livelihood in his desired profession by APEGGA"* (Tab 34 [2])

After much justifications, references to evidence, and overall analysis, the Tribunal has pointed out the discriminations present in APEGGA's assessment methods. FD list is an "open source" documentation and to base an applicant's academic qualities on such document is not justifiable or fair in assessing a foreign trained engineer. The FE exam is based on the North American teachings and curriculums and does not necessarily follow the standards in foreign countries' education, and therefore is not a valid instrument to assess a foreign applicant's qualifications as a professional engineer. Despite Mr. Mihaly having to fail two NPPE's, APEGGA did not provide any additional instructions or explored any alternatives to the exam to assist the applicant in

preparation for the exam. The Tribunal further commented that the “one size fit all” approach to these exams are not particularly helpful to foreign trained engineers who requires more assistance in understanding APEGGA’s process and procedures. The Tribunal then ruled that “*Examination Standard and Experience Standard used by APEGGA is in violation of the Act and cannot be justified.*”^[2] The tribunal orders APEGA to remedy this violation by rewarding \$10,000 in general damage to Mr. Mihaly, creating a committee to individually assess Mr. Mihaly’s qualifications, and assigning a Mentor to assist integration into the Canadian field of profession.

C. The Court of Queen’s Bench

After the decisions were made by the AHRC (tribunal) to order APEGA to follow such remedies, Madam Justice Ross of the Court of Queen’s Bench had reviewed the case once again only to cross-appeal the decisions made by the tribunal were to be reversed. The most common reasons why the Justice Ross is not in an agreement with the tribunal’s decision is that there are too many “findings” that are not supported by any evidence provided by the both parties.

D. Court of Appeal of Alberta

On January 10, 2017, the Court of Appeal of Alberta has made the decision that the appeal made by the AHRC is to be dismissed. Mainly since there are clear lack of evidence which not support many of the appeals, and lack of actions taken by Mr. Mihaly to further prove his appeal has not been made despite given early notices.

The Court of Queen’s Bench Decision

The first fact that Justice Ross pointed out was that the tribunal assumed that the foreign trained engineers would have an unfair disadvantage when writing the FE exam and hold them back in being registered as a professional engineer as a result. This assumption was not supported by any evidence, and in fact proves the opposite; with 85% chance of passing, applicants are given opportunities to retake the exam. Furthermore, this does not apply to Mr. Mihaly since he never wrote these exams for himself.

Confirmatory examinations are developed by University of Alberta and University of Calgary to cover the subject matter expected from APEGA from Canadian accredited programs and FE exams are developed by National Council of Examiners for Engineering and Surveying that covers the common fundamentals of engineering

materials covered in early studies and covering materials in their field of specialization. If Mr. Mihaly did partake in the exams, he would have been assigned for an exam in his field of specialization.

Standardized exams are widely used in many field of professions to determine the individual's qualifications to ensure the transparency and the fairness of such assessments. To impose individual assessments in such areas may threaten the purpose of "objective assessment".^[1] APEGA individually assess applicants to see if requirements are met to waive the exams. In the case for Mr. Mihaly, he had over ten years of experience, it was the quality of experience found to be insufficient with APEGA's standards. Another note is that Mr. Mihaly did not "pursue an internal appeal" when the subject of the matter became apparent, even when given the opportunities to challenge APEGA's assessments.

The orders made by the tribunal to create committees and assigning a mentor for an individual applicant imposes a threat much more than cost impact. Essentially, this accommodation will "fundamentally altering its standards and being required to act outside of its regulatory role."^[1] In any case, an organization is not subjected to forcibly change its standards and regulations to make accommodations.

Lastly, Justice Ross concluded her cross-appeal with a final point that it is not the APEGA's fault for not exploring alternative accommodations, rather it is Mr. Mihaly's responsibility to suggest other possibilities to prove his academic qualifications and his long years of experience in the field is much valued than that APEGA has given credit for. It would be near impossible to determine if Mr. Mihaly was academically qualified as he did not attempt at the three confirmatory examinations, nor the FE exam when given the notice with plenty of time to prepare for.

Reflection and Opinion

The rules and regulations that exist to govern and manage the professional work environment is necessary and should not be accommodated to fit individual needs. The "one size fits all" approach may be outdated and could impose threats to individuals who excel in different areas that are not necessarily standardized. However, these regulations are still expected to be met and followed as fundamentals of engineering practices. Especially in an environment with higher responsibilities in every action taken by an individual such as the Engineering profession, more careful considerations are to be made in order to ensure liability and the safety of the public.

It is agreeable that foreign applicants such as Mr. Ladislav Mihaly could face much more difficulties than a Canadian accredited program graduate due to factors such as language barrier, cultural differences, and professional environment. All engineers were educated and share the same fundamentals to some extent and the methods to assess foreign applicants taken by APEGA cannot be viewed as a form of discrimination as the organization assesses applicants if they do uphold the commonly shared fundamentals. On another note, the confirmatory exams exist to confirm that the applicant is qualified to practice engineering under the Canadian standards. These exams are made in such ways that covers the fundamentals of practicing engineering which is provided as entry level courses in Canadian programs, with high percentage rate of passing the exam. In the case of Mr. Mihaly, he failed the NPPE twice, and had not attempted the three confirmatory exams that were requested nor taken the courses in Engineering Economics. Despite being given another opportunity to write the exam in an alternative form of FE exam, he did not partake in the given opportunity, and this action imposes difficulties to properly assess the qualifications of Mr. Mihaly.

It may be questionable that highly-accredited organizations such as APEGA would be using documents such as the Foreign Degree List, however this list was created and carefully reviewed under the Canadian Council of Professional Engineers, now known as Engineers Canada. Such document cannot be viewed as a “second-hand information”. The purpose of this document is to confirm that the education provided in foreign countries meet the standards in Canadian accredited programs to ensure that all engineers in practice are fundamentally on the same page. Viewing such document as a form of discrimination cannot be considered in such way, rather as an accommodation to foreign trained engineers to integrate into the Canadian field of engineering profession without outstanding differences.

Such allegations and assumptions made without the proper evidence to support it, the actions taken by APEGA cannot be viewed as discrimination against Mr. Mihaly, and I am in full agreement with the decision made by the Court of Queen’s Bench.

References

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