

Report on Mihaly vs. APEGA Court Case

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Introduction

This report details the history of the alleged discrimination of Mr. Ladislav Mihaly by the Association of Professional Engineers and Geoscientists of Alberta (APEGA), regarding the quality of his engineering education from the former Czechoslovakia. The case passed through a series of courts, starting with a tribunal from the Alberta Human Rights Commission, then a trial through the Court of Queen's Bench, and finally, an appeal in the Court of Appeal of Alberta. This report will provide the background and the events leading up to Mr. Mihaly's original complaint to the Alberta Human Rights Commission. It will also look at certain parties involved in the matter and mention the stakes due to the decision. The ultimate decision by the Court of Queen's Bench will be studied in detail. In conclusion, we will analyze and make an opinion on the decisions by each of the court based on evidence at hand. Also, a critique on APEGA's system for admittance of foreign-trained engineers will be made.

Stakeholders

1. APEGA

The Association of Professional Engineers and Geoscientists in Alberta regulates the practice of engineering and geoscience on the behalf of the Government of Alberta through the Engineering and Geoscience Professions Act. Their main function is to provide licensing to individuals and companies that wish to practice engineering within the province. Upon approval by APEGA, engineers receive the title of P.Eng. and have the legal right to call themselves engineers in Alberta. ^[1]

2. The Court of Queen's Bench

The Court of Queen's Bench is the highest court in Alberta constituted under the Court of Queen's Bench Act. Its mission statement is to provide an impartial forum for the just and proportional resolution of legal disputes, to preserve the Rule of Law and to protect the rights and dignity of all. This court is responsible for enforcing all federal and provincial legislation and does not limit jurisdiction of other courts and tribunals. It is the primary forum for judicial review of government action and hears statutory appeals from the decisions of certain administrative tribunals. ^[2]

3. The Alberta Human Rights Commission

The Alberta Humans Rights Commission is the organization that protects Albertans from discrimination based on specific grounds under the Alberta Human Rights Act. Upon receiving a complaint of alleged discrimination, the commission conducts an investigation in which both parties are updated and allowed to comment. This

complaint can be sent to the Director of the Commission, who can either dismiss the complaint or refer the complaint for tribunal review. After the investigation is completed and there is reason to believe discrimination has occurred, the commission will ask the parties to resolve the complaint through an agreement on a remedy (financial or non-financial).^[3]

4. Mr. Ladislav Mihaly

Mr. Ladislav Mihaly is a Czechoslovakian immigrant with a Masters in Science with a Specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University and a Certificate in Corrosion Engineering from the Institute of Chemical Technology. He applied for P.Eng. designation with APEGA first in 1999, and upon a series of denials, he filed a complaint with the Alberta Human Rights Commission in 2008. His case was first heard in 2014 by a tribunal with the Alberta Human Rights Commission with a decision in his favor. A cross-appeal by APEGA was heard by the Court of Queen's Bench in 2016, which revoked the decision by the Alberta Human Rights Commission. Finally, in 2017, Mr. Mihaly brought his case to the Court of Appeal of Alberta, which resulted in his case being dismissed.

5. Foreign Universities offering Engineering Programs and their Graduates

Any immigrants into Canada with an engineering degree from their respective country are required to prove to provincial engineering authorities that their degree embraces the same qualities of education that a CEAB-accredited university program offers. The outcomes of this case affects how these authorities grant P.Eng designations.

6. CEAB-accredited University Engineering Programs

Canadian universities have a stake in this matter since the quality of their education standards are being called into question here. Mr. Mihaly makes a claim that his engineering education offers the same standards as a Canadian university. If this were true, Canadian universities may have to adapt their programs to accommodate a discrepancy – a potentially costly event.

7. Mr. Mihaly's Family

Due to Mr. Mihaly's inability to acquire a job in his chosen field of expertise, Mr. Mihaly and his family have experienced a lower quality of life. Being forced to work hard labour jobs, Mr. Mihaly has lost a few fingers and is experiencing hearing problems. His son has mental health problems due to the hardships the family has faced. A favorable result

from this case would allow Mr. Mihaly and his family to escape from a lower income level. ^[4]

Background

Mr. Ladislav Mihaly was born in the former Czechoslovakia. He graduated, with an M.Sc. diploma and a specialization in Technology of Fuels and Thermal Energy, from Slovak Technical University in 1975. He also got a certificate in Corrosion Engineering from the Institute of Chemical Technology in 1981. He later immigrated to Canada and applied to be registered as a Professional Engineer with APEGA, in May 1999. ^[4]

On May 13, APEGA confirmed that they had received the application and informed Mr. Mihaly that they needed additional documents, including transcripts, and he needed to write the National Professional Practice Exam (NPPE). Mr. Mihaly wrote the NPPE on January 17, 2000 but failed. The Board of Examiners of APEGA reviewed Mr. Mihaly's application and concluded that his degree from Slovak Technical University had many aspects of chemical engineering. On February 11, APEGA wrote to MR. Mihaly to inform him that, in addition to passing the NPPE, he must also pass three confirmatory exams and take an exam or a course in engineering economics by May of next year. ^[4]

Mr. Mihaly registered to write the NPPE for the second time on October 16, 2000, but he did not appear on the day of the test. Mr. Mihaly had not completed the required exams by the deadline of May 2001. Therefore, APEGA withdrew Mr. Mihaly's application to be registered as a Professional Engineer on June 29, 2001. ^[4]

A year later, in May 2002, Mr. Mihaly sent an email to APEGA in which he stated that he was unable to contact APEGA earlier, because he was involved in a serious car accident. In this email, Mr. Mihaly also asked APEGA to open his application for registration again, and he applied to write the NPPE on July 15, 2002. In response, APEGA reopened Mr. Mihaly's application and gave him new deadlines to complete the tests. ^[4]

On June 20, 2002, Mr. Mihaly once again wrote to APEGA, and stated that he had just found out that his master's degree didn't even meet the requirements of a Canadian bachelor's degree. He complained that this information was not conveyed to him by APEGA. APEGA replied to his email the same day. Jennifer Scherban of APEGA wrote that Mr. Mihaly's degrees were on the Foreign Degree List of the Canadian Council of Professional Engineers, and everyone whose degree is on that list, is required to pass the exams assigned to Mr. Mihaly. This was reiterated in a formal letter to Mr. Mihaly. On July 8, Mr. Mihaly had a telephone conversation with APEGA, in which he insisted that the required exams be waived, based on his work experience. ^[4]

Mr. Mihaly wrote the NPPE on July 15, which he failed once again. Mr. Mihaly didn't write the confirmatory exams and the engineering economics exam either by the deadline of May 2003. As Mr. Mihaly had failed to complete the exams for a second time, APEGA withdrew his application. ^[4]

On October 3, 2006, Mr. Mihaly requested APEGA to reopen his application for a second time. APEGA replied that Mr. Mihaly should submit an updated resume as three years had passed since his application was closed. Mr. Mihaly submitted the resume and other required information on November 16. On August 10, 2007, the Board of Examiners of APEGA reviewed Mr. Mihaly's new application and reached the same conclusion as last time. Mr. Mihaly needed to write three confirmatory exams and an exam in engineering economics, and his work experience was not acceptable. ^[4]

Mr. Mihaly, for a third time, did not write any of the required exams. Due to Mr. Mihaly's displeasure, on July 8, 2008, APEGA sent him a Reconsideration and Appeal Sheet to file an appeal if he wanted to do so. Mr. Mihaly, instead, filed a complaint with the Alberta Human Rights Commission (AHRC). ^[4]

In 2014, a tribunal from the AHRC ruled in the favor of Mr. Mihaly and found that APEGA discriminated against him based on his country of origin. APEGA appealed this decision in the Court of Queen's Bench, while Mr. Mihaly cross appealed, seeking an award of one million dollars. The Court of Queen's Bench upheld APEGA's appeal and dismissed Mr. Mihaly's appeal. Mr. Mihaly appealed this decision in the Court of Appeal of Alberta, but his application was dismissed.

The Court of Queen's Bench Decision

On February 6, 2014, the tribunal of Alberta Human Rights Commission concluded the case. Its finding was that APEGA, indeed, discriminated against Mr. Mihaly by not giving him an individualized consideration. Mr. Mihaly was awarded \$10,000 in damages, and APEGA was ordered to reconsider Mr. Mihaly's application to register as a Professional Engineer. APEGA appealed this decision of the tribunal in the Court of Queen's Bench, while Mr. Mihaly cross-appealed the tribunal's decision to not award him \$1,000,000 in damages and registration with APEGA. ^[5]

To prove discrimination, Mr. Mihaly needed to establish three things. Firstly, he had to establish that he possessed one of the characteristics that are protected from discrimination. The court agreed with the tribunal, that Mr. Mihaly's place of origin was a characteristic that was protected from discrimination by law under the Alberta Human Rights Act (AHRA). Secondly, Mr. Mihaly had to establish that he had experienced an adverse impact. The court agreed with the tribunal, on this too, that the requirement to write examinations, for

registration as a Professional Engineer, was an adverse impact. Lastly, Mr. Mihaly had to establish that the adverse impact was caused due to the protected characteristic. This was the point on which the court disagreed with the tribunal. ^[5]

The tribunal's assessment was that Mr. Mihaly was advised to write the exams based on his place of origin, without an individualized consideration of his degrees and work experience, and that constituted as discrimination. The court disagreed that the requirement to write the exams was discrimination, as all foreign applicants, regardless of their place of origin, are required to write the exams. ^[5]

In such a case, Alberta Human Rights Act outlines the powers of the Court of Queen's Bench on appeal of a Human Rights Tribunal decision. It states that the court may confirm, reverse or vary the decision or it may send the matter back to the tribunal with special instructions. The judge in the Court of Queen's Bench concluded that the decision of the tribunal should be reversed and that there is no sufficient cause to send the matter back to the tribunal. The judge also concluded that the cross-appeal was dependent on a decision in favor of Mr. Mihaly, and hence had no standing on its own as the decision of the tribunal was reversed. ^[5]

As mentioned earlier, the main point of contention between the court and the tribunal was if the requirement to write exams constituted discrimination. By the time of appeal hearing, Supreme Court of Canada and the Alberta Court of Appeal had released decisions on some cases which were deemed relevant. These decisions clarified some points on procedural fairness, interpretation of Alberta Human Rights Act and reasonable standards. ^[5]

APEGA, the appellant, raised four issues: procedural fairness, jurisdiction, prima face discrimination and justification. On the first issue, the court concluded that the tribunal had referred to 'Amacon' in making its decision, which did not apply to Mr. Mihaly's case. The court stated that Mr. Mihaly's case was more relevant to 'Pope & Talbot Ltd v British Columbia', and in light of that case, APEGA did not breach rules of procedural fairness. On the second issue of jurisdiction, the court concluded that the tribunal did not lack jurisdiction as it had jurisdiction to apply legal test to determine if his place of origin was the cause of adverse impact. ^[5]

On the third issue of prima face discrimination, the court concluded that the tribunal's finding, that APEGA's policies were based on discriminatory assumptions, was unreasonable and not based on evidence. APEGA, on the other hand, provided sufficient evidence to prove that its policies were based on its extent of knowledge on foreign degrees. Lastly, on the issue of justification, the court concluded that, the tribunal's finding that APEGA had failed to justify its registration requirements under AHRA, was unreasonable. ^[5]

Finally, Mr. Mihaly's appeal in the Alberta Court of Appeal was also dismissed as he had failed to follow up on the case in the given time frame. ^[6]

Reflection and Opinion

While the AHRC brings up valid points regarding the application process to become a Professional Engineer, the tribunal as noted by the Court of Queen's Bench ignores significant pieces of evidence. For example, the tribunal notes that APEGA uses the Foreign Degree (FD) list to assess the quality of an applicant's engineering education instead of directly consulting the school. Not only this, schools on the FD list remain there without any updates on currency of information. The Court of Queen's Bench points out that it is impossible to determine if APEGA has the resources to proactively negotiate agreements with a large number of universities. As a result, APEGA simply has to rely on work done by the CEAB and other national or international organizations. ^{[4][5]}

The tribunal also mentions that Mr. Mihaly was disadvantaged due to the exams. Ignoring the one absence due to a car accident, Mr. Mihaly had missed or failed all attempts to write the NP Practice Exam. In addition to this, APEGA assigned Mr. Mihaly the three confirmatory exams and later on, the FE exam to assess his technical expertise. To be mentioned, since Mr. Mihaly's school was on the aforementioned FD list, the number of confirmatory exams he had to write was dropped from five to three. Mr. Mihaly did not make a single attempt to write any of these exams. With a large window of a year to complete these exams, Mr. Mihaly could easily have saved the required exam fees. During the tribunal, Mr. Mihaly notes the significant challenges his family faced yet he did not have the drive to complete the exams that could potentially have improved his family's quality of life. In our opinion, Mr. Mihaly was acting negligent and such behavior could have severe effects in industry. ^{[4][5]}

Among the requests in remedy to Mr. Mihaly's case, the tribunal wanted APEGA to establish a committee with successful engineers educated in countries outside of Canada. This committee would personally assess Mr. Mihaly's qualifications and provide exemptions for him such as waiving exams or providing courses that correct deficiencies of foreign engineers. Once again, the tribunal ignores the potential costs associated with assembling such a committee. In the long run, this adds complications from future applicants asking to be assessed using such a procedure. ^{[4][5]}

On the topic of waiving exams, the current procedure waives exams based on work experience or education background; to be reiterated, Mr. Mihaly had two confirmatory exams waived. In terms of Mr. Mihaly's work experience, the Experience Subcommittee found that Mr. Mihaly had been working at a C-level (or technician work) and that his 12 years of work

experience were not progressively responsible. While his work as a technician proves that he would have an understanding of plant operations, he may not necessarily have been competent in the daily roles of an engineer. ^[4]

As for the course-based option, APEGA had requested Mr. Mihaly to take an engineering economics course initially. Since this option was offered, APEGA certainly gives its applicants the opportunity to account for deficiencies that the Board of Examiners noticed. ^[4]

Finally, the Court of Queen's Bench recalls a case involving Hydro Quebec. In this case, Hydro Quebec states that the employer is not required to change working conditions, but if they can do so without complications, the employer should assist the employee to allow them to complete their work. In this case, APEGA is not obligated to change their operations, but they should have helped Mr. Mihaly more during the process. ^[5]

Together, we can see that the AHRC's allegation of discrimination was not based on the evidence at hand. The hearing at the Court of Queen's Bench exposes these issues quite well, and it recognizes that while there is certainly a case for discrimination, other factors in the case make the claim unreasonable. However, the tribunal's discussion of the case does raise several issues regarding foreign engineers and their applications.

During both hearings, Mr. Mihaly mentioned that employers refused to hire engineers with more than six years of experience in junior positions, making it hard for him to find a job. As a result, it would have been hard to satisfy the condition of one year of work within Canada. APEGA does not help assist people in this situation. APEGA does not have any programs that would provide applicants with networking or volunteering opportunities and allow them to advance their application. ^[4]

Another major issue in the process is the validity of the FD list. Dr. David Lynch testified that the CEAB accreditation process was very elaborate, costing the University of Alberta around one million dollars. All Canadian universities have to be accredited and it must be renewed after a period. In sharp contrast, the FD list does not require any renewals, so it is hard to assess whether an engineering program has changed. For example, if we look at the Slovak Technical University program for a Bachelors in Chemical Engineering, it is a 3 year program that teaches similar courses to those taught at the University of Calgary ^[7]. Education programs change over time to adapt to the changing global market, and APEGA's FD list does not recognize that well.

In conclusion, we do not agree with the assessment made by the Alberta Human Rights Commission, and agree with the study done by the Court of Queen's Bench. Since Mr. Mihaly could not provide sufficient evidence to keep this case open, we also agree with the Court of Appeal of Alberta's decision to close this case.

Reference

- [1] "About APEGA | APEGA", *Apega.ca*. [Online]. Available: <https://www.apega.ca/about-apega/>. [Accessed: 16- Feb- 2018].
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- [4] Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1
- [5] Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016 ABQB 61
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