

Ladislav Mihaly V. APEGA

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Introduction

The Mihaly case was a human rights lawsuit that was initially filed in 2008. This report has been written with the intent on learning about Ladislav Mihaly's case. This report will look at his initial attempt to register as a Professional Engineer through APEGA in 1999, the initial complaint filed against APEGA in 2008 to the Alberta Human Rights Commission, its decision in 2014, APEGA's appeal through the Court of Queen's Bench Alberta and its decision in 2016, as well as the attempted appeal by Mr. Mihaly in 2017. Additionally, this report explores APEGA's purpose, its standards and what it takes to be licensed as a Professional Engineer in Alberta. Understanding these requirements is critical in understanding why engineering ethics and being competent in the work you do as an engineer is so important and why APEGA is so thorough when it comes to licensing somebody as a Professional Engineer. This report is very relevant for a third-year engineering student in Alberta as it is important to understand why APEGA exists, and how it affects the lives of the public in an overall positive way.

Stakeholders

APEGA is the Association of Professional Engineers and Geoscientists in Alberta. APEGA was created in 1920 and they are an association of self-regulating professionals, on the behalf of the Government of Alberta, whose purpose is to license and regulate practices of engineering and geoscience in Alberta. They set practice standards and develop codes of conduct and ethics for its members and permit holders and also, investigate and discipline those who fail to follow these codes/standards (APEGA, 2018).

The Court of Queen's Bench Alberta (ABQB) is one of the main courts in our province. It is constituted by the Court of Queen's Bench Act and deals with many cases to do with criminal matters, civil proceedings, and the judicial review of government and tribunal actions in

Alberta. The Court of Queen's Bench consists of a Chief of Justice, an Associate Chief of Justice, seventy-four Justices, a number of half-time Justices and a Master in Chambers (Moreau, 2018).

The Alberta Human Rights Commission (AHRC) is an independent commission of the Government of Alberta and consists of The Chief of the Commission, and Tribunals. They secure that all Albertans have equal opportunity in all aspects of life no matter their race, origin, religion, beliefs or views. The Alberta Human Rights Commission does this by settling court hearings in cases based on discrimination, by carrying out functions described by the Alberta Human Rights Act (Government of Alberta, 2012).

Mr. Ladislav Mihaly is an Albertan who immigrated from the former Czechoslovakia. He filed a human rights complaint against APEGA in 2008, due to his inability to be licensed as a Professional Engineer in 1999. Mr. Mihaly has two Masters degrees from the Slovak University in Bratislava and the Institute of Chemical Technology (ICT) in Prague in 1975 and 1981, respectively. Mr. Mihaly claimed that APEGA refused to register him as a Professional Engineer in Alberta due to discrimination and sought compensation from APEGA due to his struggles to find work in Alberta as a result (CanLII, 2014).

Dr. Dean Lynch is a witness who appeared on behalf of APEGA in the AHRC case in 2014. Dr. Lynch graduated with a Ph.D. in Chemical Engineering from the University of Alberta in 1982 and was the Dean of the Faculty of Engineering at the University of Alberta at the time of the trial. Dr. Lynch was also a long-time member of the Canadian Engineering Accreditation Board (CEAB) and held many high positions during his time at the CEAB including, but not limited to, the Chair and Vice-Chair (CanLII, 2014).

Dr. Gary Faulkner is the second witness for APEGA in the AHRC case in 2014, who graduated from the University of California in 1969 with a Ph.D. in Applied Mechanics. After his Ph.D. he took on many positions at the University of Alberta, before eventually becoming the Chair of Department of Mechanical Engineering, a position which he held for seven years. He then became the Director of Rehabilitation, Research, and Technology Development in the

Glenrose Rehabilitation Hospital after leaving the University of Alberta in 2009. Dr. Faulkner also joined APEGA's Board of Examiners in 1988 and became the Chair of Board of Examiners in 1995 (CanLII, 2014).

Mr. Mark Tokarik was the third and final witness for APEGA in the AHRC case in 2014. Mr. Tokarik has two Bachelors degrees, one in Engineering, and one in Law which he obtained in 1981 and 1989, respectively. Mr. Tokarik also has a long history with APEGA, starting when he joined as an Assistant Director of Registration in 1999. He then became the Director of Registration and finally the Deputy Registrar in 2012. He was also a member in many engineering organizations such as: The National Engineering Admission Officials Group, Engineers Canada's Foreign Engineering Qualifications Committee, and Engineer Canada's Admissions Issues Committee.

Background

In May of 1999 Mr. Ladislav Mihaly applied to be a Professional Engineer in Alberta through APEGA after immigrating to Canada from the former Czechoslovakia. After acknowledging Mr. Mihaly's application APEGA informed him that he must write and pass an NPPE, write three other exams, in order to demonstrate that his skills and knowledge in Engineering are sufficient to be registered as a P.Engg, and either take a course, or pass an equivalency test in Engineering Economics by May of 2001. Mr. Mihaly failed the NPPE and did not attempt any of the other exams, causing his initial application to be closed. In 2000, Mr. Mihaly attempted to register as a P.Engg for a second time, under the same conditions where he failed during the first attempt. In 2001, APEGA withdrew Mr. Mihaly's application for a second time because he missed all of the exams required. In 2002, Mr. Mihaly's application was reopened again but was closed in 2003 when he failed the NPPE twice, and still did not write the equivalency exams scheduled. In 2006, Mr. Mihaly's application was re-opened for the final time where he once again failed to write any of the required exams (CanLII, 2014).

After the failed attempts, Mr. Mihaly filed a complaint to the Alberta Human Rights Commission in 2008, stating that APEGA discriminated against him due to his place of origin. In 2014, Mr. Mihaly and APEGA were seen by the Alberta Human Rights Commission, with Moosa Jiwaji as the Tribunal for the case. During the case Mr. Mihaly was the sole witness and represented himself. He stated that he received two letters stating that his education was acceptable to become an engineer from the Canadian Council of Engineers and the Canadian Council of Technicians and Technologists. The former was never submitted to APEGA and not produced in court, as Mr. Mihaly claimed that they were no longer in his possession due to the 14-year gap between his initial application and now. The latter however was confirmed as it was used in his initial application with APEGA. Mr. Mihaly also claimed that APEGA informed him that his education was equivalent to that of a Professional Engineer in Canada. However, he later admitted that no such letter or email said this and that APEGA never stated that his education was equivalent. Despite the testimonies from APEGA's witnesses Dr. David Lynch, Dr. Gary Faulkner and Mr. Mark Tokarik the Tribunal found APEGA guilty of discriminating against Mr. Ladislav Mihaly due to his place of origin. The decision was made on February 6th, 2014 that APEGA must pay \$10 000 in general damages to Mr. Mihaly due to the hardships that he and his family endured and APEGA's failure to provide meaningful assistance to him during this time. Additionally, the Tribunal stated that APEGA must reconsider his application, review Mr. Mihaly's transcript and experience more thoroughly to identify his skills and experience, direct him to community resources to aid in his skills in the English language and to match a mentor to him with a similar background to help integrate him into the profession (CanLII, 2014).

A month after the decision by the Tribunal, APEGA and Mr. Mihaly filed an appeal through the Court of Queen's Bench against the decision of the Alberta Human Rights Commission (CBC News, 2014). After many delays, the case was finally heard in 2016. During this case APEGA brought up four issues; Did the Tribunal breach the rules of procedural fairness? Does the place where someone received their education relate to discrimination based on country of origin in this case? Did the Tribunal rely on correct tests to determine if Mr. Mihaly faced prima facie discrimination? And finally, was the Tribunal's Decision that APEGA's registration requirements unjustified unreasonable? On January 26th, 2016 the ABQB

concluded that the original decision of the Tribunal should be reversed (APEGA, 2016). Further details for this case will be discussed in the next section of this report.

Mr. Ladislav Mihaly then applied for an appeal to the ABQB's decision through the Alberta Court of Appeal. In January of 2017, the application was dismissed, and it was re-confirmed that APEGA's application process was fair and served the public interest (Cotter, 2017).

The Court of Queen's Bench Decision

As mentioned previously in this report, the ABQB decided to rule in favor of APEGA and reversed the decision of the Tribunal, meaning that APEGA owed Mr. Mihaly nothing. This decision also further reinforced the fact that APEGA doesn't exist to please the people applying to become a Professional Engineer, they exist to ensure that those who choose to practice an engineering profession are qualified and licensed to do so. Engineers serve the world, and thus it is extremely important for professions such as engineering to be regulated by associations like APEGA to ensure the wellbeing of the public.

The ABQB decided to reverse the decision made by the Tribunal that found APEGA guilty of discriminating against Mr. Mihaly for many reasons. APEGA explained in court that they take applicants very seriously as "an individual cannot practice engineering in Alberta unless they have been approved for registration" (APEGA, 2016). APEGA also focused the requirements they've set, and the application process itself. Specifically, that all applicants must be a Canadian Citizen, or a Permanent Resident in Canada, which Mr. Mihaly was. But besides being a Canadian, applicants must also be of good character and reputation, which can be proved by the NPPE (which Mr. Mihaly failed multiple times), be proficient in English, and possess the required academic qualifications and experience (APEGA, 2016). This academic qualification can be proved by either graduating from an accredited university or institution, or by writing one or more equivalency exams. Mr. Mihaly did not graduate from an accredited University, and he also failed to show up for any of his scheduled exams.

To become an accredited University in Canada, the CEAB must review their curriculum, faculty and materials. Furthermore, the University must also prepare a detailed document for the CEAB that is reviewed by them. After that, an in-person inspection is held at the university by the CEAB. The purpose of this inspection is to check the quality of the University, and to ensure that all graduates from said University are undoubtedly qualified and meet every requirement set out by APEGA. After all of that, the reports from the inspection are reviewed by the entire Accreditation Board of the CEAB, and then it can finally be decided if the University will receive its accreditation. Mr. Mihaly did not graduate from a Canadian University, but for international Universities engineering programs they can enter into Mutual Recognition Agreements (MRAs). The process to determine whether a program may enter an MRA is very similar to the accreditation of a Canadian University. Usually, graduates from MRA programs have their FE exams waived. However, there are no MRAs between Slovakia and Canada and the University that Mr. Mihaly graduated from never applied to the CEAB, and thus has not been assessed to be an equivalent program.

The ABQB determined that there was no breach of the rules of procedural fairness in the original AHRC case, as APEGA had a chance to respond to all evidence against them at the time. However, the ABQB did agree with APEGA that a person's "place of origin" is not the same as where they received their education. APEGA did not have a problem with Mr. Mihaly being Slovakian, they did not license him because the school where he received his degree from was not proven to meet APEGA's standard of education. Additionally, the ABQB determined that the test made for prima facie discrimination was not performed correctly, as the Tribunal failed to perform the test in relation to the NPPE. The NPPE is not a test that only applies to people who have graduated from a foreign university, APEGA requires all applicants to write, and pass the NPPE. Mr. Mihaly failed the NPPE multiple times, and it was determined that his failures had nothing to do with his place of origin. As for the FE exams, due to the fact that Mr. Mihaly did not even attempt a single one of his scheduled exams, it cannot be determined if he would have passed, or failed them. Due to the above reasons, the ABQB determined that the Tribunal's decision in the case from 2014 was unreasonable, and thus reversed the decision made by the Human Rights Tribunal.

Reflection and Opinion

I firmly believe that the original decision made by the Alberta Human Rights Committee was wrong. In my opinion, APEGA is an extremely important organization that keeps the well-being of the public as it's number one priority. Engineering plays a big part in the world, almost every single thing we use in our everyday lives had to be engineered by someone, this can be as small as a mechanical pencil, or as large the International Space Station. Ensuring that all engineers who practice their profession in Alberta must be licensed also proactively reduces the risk of damage to property and humans at the same time. Of the approximate 1500 international applicants who attempt to get licensed through APEGA each year, sixty percent are registered without issue and did not require to write an FE or confirmatory exam, twenty-five percent are assigned an FE or confirmatory exam, and the final fifteen percent show enough engineering experience to waive their exams (APEGA, 2016). This shows that being discriminated had nothing to do with Mr. Ladislav Mihaly's denial for his request to be licensed as a Professional Engineer in Alberta. The fact that Mr. Mihaly failed the NPPE exams multiple times and that he failed to even attempt any FE exams, despite being given multiple chances, further reinforces that Mr. Mihaly simply does not have sufficient skills/knowledge to be Professional Engineer.

I was extremely relieved to hear that The Court Queen's Bench of Alberta decided to overrule, and reverse the decision made by the AHRC. I agree completely with the decision made by the ABQB. It was evident in the 2016 trial that Mr. Mihaly's place of origin had nothing to do with his inability to meet the requirements set by APEGA. Mr. Mihaly took advantage of the Alberta Human Rights Act and attempted twist his case into a case of discrimination, instead of under qualification. Knowing that the ABQB made the right choice, and that an organization like APEGA will not be faulted for serving the public interest, renews my faith in the justice system that I lost while reading the 2014 case.

I also agree with the decision made by the Alberta Court of Appeal in dismissing the appeal of Mr. Ladislav Mihaly against the decision made by the ABQB. I truly believe that the original decision made by the AHRC was unjustified and did not benefit society, APEGA, or the

engineering profession. The dismissal of this appeal further reinforces how important it is that only a qualified, and experienced person may practice being a Professional Engineer in Alberta.

I do believe that APEGA should accommodate foreign-trained engineers and geoscientists, but not to the extent of what Mr. Mihaly was seeking. My father was a surgeon general in China, but when he immigrated to Canada he had to be re-certified by the medical equivalent to APEGA in order to practice his profession in this country. He always stated that not knowing even a word in English when immigrating here was by far the biggest challenge. He knew that he was a proficient surgeon and could have passed any exams that test his skill or knowledge, but learning a whole language in a short period of time is no easy feat. At the end of the day he decided that focusing on his young family was more important than learning English in order to be registered as a surgeon in Canada. Consequently, he never ended up applying for the license. Instead, he chose to use his knowledge and follow his passion in the next best way. He has been a Research Biologist at the University of Calgary for the past 20+ years, instead of saving lives directly, he now puts his time and efforts into research that may someday help others. Because of this, I believe that APEGA should accommodate foreign workers by aiding them or directing them to a program that can help them learn the English language that focuses on engineering and geoscience. I do not believe it is fair for APEGA to accommodate the lack of experience or knowledge, but the English language can be a huge wall for some who are otherwise completely qualified and competent in doing their jobs.

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