

ENGG 513: The Roles and Responsibilities of the Professional Engineer in Society

APEGA vs. Mihaly Case Study Report

Melody Almario
Janine Buzar

February 4, 2018
Denis Onen

Introduction

The primary purpose of the Canadian Code of Ethics for Engineers is to “hold paramount the safety, health, and welfare of the public” [1]. The Association of Professional Engineers and Geoscientists of Alberta (APEGA) ensures that this purpose reflects on its practice through establishing regulatory guidelines on licensing engineers. These guidelines include assessing an applicant’s academic credibility, quality of engineering experience, and capability of passing technical examinations. In this report, we will see how APEGA consistently executed its fair guidelines in assessing Mr. Ladislav Mihaly, a foreign engineer seeking to practice engineering in Canada. This report focuses on the dispute between APEGA and Mr. Mihaly, and how he accused the association of committing prima-facie discrimination in assessing his academic qualifications. However, in this issue, we will see how APEGA proved to the Alberta Human Rights Commission, the Court of Queen’s Bench and the Court of Appeal of Alberta that its regulatory process was credible and non-discriminatory. Overall, this report proves how APEGA unquestionably acts on its role to protect life, health, welfare, and safety of the public which corresponds with the Canadian Code of Ethics for Engineers.

Stakeholders

- **APEGA**

APEGA, which stands for Association of Professional Engineers and Geoscientists of Alberta, regulates Alberta’s engineering and geoscience practices on behalf of the Government of Alberta. One of the main responsibilities of APEGA is to license professional engineers and geoscientists that comply with its standards; earning “the right to practise and use reserved titles and designations”[2]. It manages its members and permit holders by implementing codes of conduct and ethics, ensuring the safety of the public. APEGA is one of the primary key stakeholders associated with Mr. Mihaly’s case. Mr. Ladislav Mihaly, filed a complaint against APEGA because of refusing to recognize his education from Czechoslovakia to be equivalent of an engineering degree acquired from a Canadian University. Instead, they obliged him to confirm his academic background by writing specific examinations. The association required Mr. Mihaly to pass these examinations that are based on their practice standards to ensure his competency before registering and licensing him as a Professional Engineer in Canada.

- **The Court of Queen’s Bench**

The Court of Queen’s Bench of Alberta, constituted by the Court of Queen’s Bench Act, is responsible to manage criminal matters and civil proceedings. It has “the power to try

any indictable offense under the Criminal Code of Canada” [3]. The Court of Queen’s Bench also acts as the main forum for reviewing government action in Alberta judicially and “hears statutory appeals from the decisions of certain provincial administrative tribunals” [3]. In this case, the Court of Queen’s Bench adjudicated on the appeal and cross-appeal of APEGA and Mr. Mihaly, respectively. The verdict of the Court of Queen’s Bench is that did not discriminate Mr. Mihaly based on his place of origin, overriding the Tribunal’s judgement; thus, rejecting Mr. Mihaly’s cross-appeal.

- **The Alberta Human Rights Commission (Human Rights Tribunal)**

The Alberta Human Rights Commission is created by the Government of Alberta and has been independent in executing its mandate of “to foster equality and to reduce discrimination” [4]. The Commission protects Albertans from discrimination under the Alberta Human Rights Act through public education and community initiatives, resolving discriminatory complaints, and holding court hearings and human rights tribunal. The objective of the Alberta Human Rights Act is to provide equal opportunity to all Albertans without discrimination. In the case of Mr. Mihaly, the Alberta Human Rights Commission came to a conclusion that he was indeed being discriminated against based on his place of origin. The Commission ordered APEGA to provide support to Mr. Mihaly and arrange options to help him get his license as a Professional Engineer.

- **Mr. Ladislav Mihaly**

Mr. Ladislav Mihaly emigrated from Czechoslovakia where he was born and educated. He studied at the Slovak Technical University in Bratislava, in 1975, where he obtained a M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy. Additionally, in 1981, he acquired a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague. After immigrating to Canada, Mr. Mihaly applied to APEGA to get his title as a Professional Engineer in 1999. After his continuous failed attempts for over approximately nine years, he decided to file a complaint against APEGA for discrimination.

- **The Court of Appeal of Alberta (The Honourable Mr. Justice Frans Slatter)**

One of the stakeholders associated with this case was the Court of Appeal of Alberta, specifically, Justice Frans Slatter. The Court of Appeal is the highest appeal court in Alberta and is responsible for reviewing record of a case heard by other courts to determine whether errors of law were committed in a decision. In this issue, the Honourable Justice Slatter was responsible for dismissing the appeal of Mr. Mihaly against the decision of the Court of Queen’s Bench due to various reasons. One of the reasons was due to the failure of Mr. Mihaly to file the Appeal Record [5]. Furthermore, the appellant also failed to restore his appeal and had provided no explanation of the

delay of the application of the appeal. Since the appellant did not successfully meet the test for the restoration of his appeal, the Court of Appeal officially dismissed his application.

- **Prospective Foreign Engineers Applying for APEGA Membership**

These are foreign engineers who are planning to apply for an APEGA membership as a Professional Engineer in the future. This category includes engineers who have non-accredited engineering degrees seeking to legally practice their expertise in Canada. As designed by APEGA, they are required to follow certain steps to obtain their license which will permit them to use the term “Professional Engineer”. These basic licensing steps include APEGA Assessment & Register, Work Experience Record & Application, National Professional Practice Exam (NPPE), and Receiving Licence [6]. The mentioned application process for APEGA has been reconfirmed and deemed fair after the case. This means that these stakeholders will have to obtain the same process that Mr. Ladislav Mihaly had gone through to ensure that they are qualified to serve the Alberta public. On the other hand, if APEGA had conformed by lowering its qualification standards and permit foreign applicants who did not possess sufficient qualifications, these foreign applicants would have a bigger chance of risking the safety of the public.

- **Alberta Public**

Among the other stakeholders mentioned above, the Alberta public benefit the most in the decision of the case. APEGA was established to serve and protect the Alberta public from inadequate geoscience and/or engineering practices by regulating and setting up high standards. Reconfirming the application process in obtaining APEGA membership will ensure that all professional engineers have the capability to “safeguard life, health, property, economic interests, the public welfare or the environment” [7]. On the other hand, if APEGA conformed by lowering its standards, the safety of the public could be compromised. If APEGA did not require international applicants to meet the same entry-level competency requirements as other applicants must meet, this could not ensure competent practices which could be detrimental to the welfare of the public.

Background

Mr. Ladislav Mihaly is an immigrant from Czechoslovakia who filed a complaint against APEGA, due to said discrimination in his application process to be licensed as a Professional Engineer in Canada. In May 1999, Mr. Mihaly applied to obtain his license and to practice as a Professional Engineer with APEGA for the first time. The association asked him to give three references he had worked for and requested all the

paperwork needed for his application such as transcripts, visa and a landed immigration form. They also required Mr. Mihaly to write a National Professional Practice Exam (NPPE). The Board of Examiners evaluated his work experience and have concluded that his references are from supervisors he worked for short periods of time [8]. Also, they reviewed his education background and have deemed that he had academic deficiencies. Therefore, APEGA required him to additionally write three confirmatory exams and take an Engineering Economics course or pass an equivalent exam by May 2001. On January 17, 2000, Mr. Mihaly wrote the NPPE and failed his first attempt. He then applied to take the exam again but he did not show up on the arranged day of his examination. In addition to this, Mr. Mihaly also did not write the confirmatory exams which resulted in APEGA withdrawing his application.

After these circumstances, Mr. Mihaly reactivated his application in APEGA twice, failing the NPPE on his first reactivation on January 20, 2003. Also, he wrote to APEGA asking if his two Masters Degree he acquired from Slovak Technical University in Bratislava and Institute of Chemical Technology in Prague are sufficient to prove his academic credibility. Mr. Tokarik from APEGA responded that his education did not meet APEGA's standards, hence the three confirmatory exams. Mr. Mihaly also asked for a waiver for he already had more than 10 years of engineering experience. Therefore, APEGA sent him a reconsideration and appeal sheet, accordingly. However, Mr. Mihaly never filed for an appeal.

On his second reactivation or third attempt in obtaining his license as a Professional Engineer, APEGA asked him again to complete the three confirmatory exams. In this instance, he can either take a course or write an exam in Engineering Economics, or the Fundamentals of Engineering examination (FE Exam). However, Mr. Mihaly did not write the required exams but instead filed a complaint with the Alberta Human Rights Commission on August 5, 2008. Under sections 4 and 9 of the Alberta Human Rights Act, the Commission have established that "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" [8]. The definition of discrimination that applied to Mr. Mihaly's case is that he was being "withheld or limited access to opportunities, benefits and advantages available to other members of society"[8]. In 2014, the Alberta Human Rights Commission ruled that the Examination and Experience Standard used by APEGA constituted discrimination and awarded \$10,000 to Mr. Mihaly for general damages. They also ordered APEGA to review Mr. Mihaly's transcripts and experience by consulting with the Universities he attended to and other available references, in order to have a better assessment of his skills and to determine the engineering areas Mr. Mihaly could be exempted from. Also, APEGA was

instructed to match Mr. Mihaly with a mentor that can guide him in his application process and to direct him to resources for improving his English language skills.

After resolving Mr. Mihaly's complaint to the Alberta Human Rights Commission, APEGA filed an appeal to the Court of Queen's Bench while Mr. Mihaly filed a cross-appeal. Mr. Mihaly disagreed on the tribunal's decision of not awarding him damages for his lost income. In his cross appeal, he asked for a \$1 million award with the APEGA membership and \$2 million without the membership [9]. On the other hand, APEGA is assured that they did not constitute discrimination in processing Mr. Mihaly's registration. In January 2016, the Court of Queen's Bench supported APEGA's appeal and reversed the decision of the Human Rights tribunal. They dismissed Mr. Mihaly's cross-appeal because they have ruled that APEGA was reasonable for requiring him to write the confirmatory examinations and the FE Exam. Successfully completing these requirements will prove his competency to practice safely as a professional engineer . Exempting him from these exams will cause undue hardship to the Association and also compromise the safety of the public.

Mr. Mihaly was not satisfied with the outcome of his cross-appeal and filed another appeal with the Alberta Court of Appeal. However, the Court dismissed the application since according to them, "even Canadian educational institutions must demonstrate the equivalency of their programs and Canadians who received foreign training must also demonstrate equivalency". [5] Certainly, APEGA's requirements for Mr. Mihaly's application must be met for it is the standard of the association. Furthermore, the Court found that there was a delay between the time he expressed to have the appeal restored and the time he submitted the appeal. He did not give any explanation for the delay and had yet to prepare the Appeal Record or refine his appeal. Due to these reasons, the Court of Appeal of Alberta dismissed Mr. Mihaly's application of restoring his appeal in January 2017.

The Court of Queen's Bench Decision

After APEGA appealed against the decision of the Alberta Human Rights Tribunal, Justice Ross from the Court of Queen's Bench overturned Tribunal's decision and reconfirmed that APEGA is consistent with its role to protect the public safety. Justice Ross justified that APEGA did not commit prima facie discrimination in assessing Mr. Mihaly's application. Instead, the Court concluded that the Tribunal decision was "rife with logical errors and [had failed] to take into account relevant considerations" [7]. One of the logical errors depicted include unreasonable questioning on the Mutual

Recognition Agreements (MRA) between Canada and other qualified countries. The tribunal failed in recognizing the right of APEGA to impose such an agreement to protect the safety of the public. In addition, Justice Ross also depicted the tribunal's order to APEGA as unfair. She argued that it was unfair for APEGA to accommodate Mr. Mihaly by compromising its role to protect the safety and well-being of the public. Hence, resulted in the Court to reverse the Tribunal's decision.

Justice Ross refuted the conclusion of the Tribunal regarding how APEGA discriminated applicants based on Mutual Recognition Agreements or MRA. The tribunals found that APEGA made discriminatory assumptions by exempting applicants who are from a country in MRA with Canada to take examination requirements, but not waiving examinations for applicants from countries that are not part of the agreement. This conclusion was overturned by the Court arguing that "distinctions between MRA and non-MRA countries were based on knowledge of programs rather than discriminatory assumptions" [4]. To be in MRA with Canada, the Canadian Engineering Accreditation Board (CEAB) must carefully examine whether the accreditation process in a specific country is substantially equivalent to that of the Canadian process. However, Slovakia, Mr. Mihaly's place of origin was not in MRA with Canada. Therefore, the Court accepted the argument that due to the lack of knowledge of APEGA about the education program in Slovakia, it is justifiable to require Mr. Mihaly to write NPPE to establish entry-level competency to ensure that the safety of the public is being protected.

The Court found the MRA between Canada and other countries acceptable in assessing international applicants. Mr. Mihaly was required to take the National Professional Practice Exam (NPPE) as part of the academic assessment due to the absence of MRA between his place of origin and Canada. He wrote the NPPE 3 times, and also failed 3 times. The Court found that the assessment was solely based on Mr. Mihaly's credentials. There was no evidence that this was in any way related to his origin, thereby once again justifying that APEGA did not discriminate Mr. Mihaly. The Court justified that it is acceptable for APEGA to impose the same entry-level competence requirement to all applicants, including international applicants seeking to practice their expertise in Alberta. This process ensures that all applicants are competent to serve and provide safety to the public. In addition, based on the investigations on NPPE, there was "no evidence of adverse impact on international applicants because of the place of origin" [4]. This proved that NPPE tests the applicants about fundamental knowledge about the program. This means that no matter where the applicant is originally from, the applicant must not have any difficulty in passing the examination.

In addition, the tribunals found that APEGA did not focus on individualized assessment, and based solely its judgement on examinations. However, the Court disagreed to this argument since it was evident that APEGA considered Mr. Mihaly's credentials when they reviewed Mr. Mihaly's qualifications to exempt writing the NPPE and the three confirmatory exams. It is required for the international applicant to reciprocate and assist the regulator in finding accommodation for him, however he failed in doing so. Mr. Mihaly failed in his duty to cooperate with APEGA by failing to show up to write the required examination within the period specified by the regulator. This reason, added up to how the Court came up to its conclusion to favour with APEGA.

On the contrary, APEGA was ordered by the tribunals to accommodate Mr. Mihaly. The order included the association to reconsider Mr. Mihaly's application and to help him qualify to obtain his license. The order required APEGA to "appoint a committee to assess and apply individual options to Mr. Mihaly with a view to correcting any perceived academic deficiencies" [2]. Furthermore, the Tribunals ordered to provide options and support which include potential examination exemptions. However, Justice Ross depicted that these orders were unfair for APEGA. She argued that "the duty to accommodate does not require the regulator to fundamentally alter its standards or act outside of its role" [4]. In addition, she deduced that the association would need to put in significant money and resources to fulfill the order.

In conclusion, the decision of the Court of Queen's Bench to reverse the Tribunal decision put the public safety and its well-being out of any potential risk related to this case. In addition, this case proved that APEGA has a strong application process that carefully evaluates credentials of applicants to ensure that the safety of the Alberta public always comes first.

Reflection and Opinion

Mr. Ladislav Mihaly filed his complaint against APEGA to the Alberta Human Rights Commission which then proceeded to the Court of Queen's Bench and the Alberta Court of Appeal. In spite of all Mr. Mihaly's appeals, he was not successful in proving that APEGA discriminated against him based on his place of origin by requiring him to prove his credentials through writing confirmatory examinations. Although at first, the Human Rights Tribunal had favored Mr. Mihaly and gave him \$10,000 for damages. We agree with the Tribunal's decision of awarding him money as compensation. It must have costed a fair amount of money to pay for his examination fees, repeatedly and at the same time, pay for his membership with APEGA. Also, according to him, "he has

been unemployed for three years and for about five years he worked in low paying jobs that only required high school education”[8]. In our opinion, his situation gave justification for the tribunal’s awarded money. However, we do not agree on their conclusion that he was treated differently by APEGA because of his ethnic background. All applicants go through the same registration process and their applications are reviewed in the same manner. There are a set of rules and standards that the board of examiners follow to assess every application.

We also disagree that he should be exempted from completing some of the required examinations, since it would compromise APEGA’s standards. APEGA’s main responsibility is to ensure the safety of the public. Exempting him for some of the established requirements would put the public at risk and also APEGA’s reputation as an association of self-regulating professionals. We also think that the Court of Queen’s Bench decision to reverse the tribunal’s verdict was impartial for the same reasons mentioned above. Lastly, we believe that the Alberta Court of Appeal was fair in dismissing Mr. Mihaly’s case due to his failure to follow up with his appeal. Besides, the complaint has already been disputed for a long time and it was about time to settle the matter. Overall, we believe that the rulings of the Court of Queen’s Bench and the Court of Appeal of Alberta were deemed appropriate.

We believe that all engineers around the world, regardless of which university or institution they have obtained their degree or engineering-related experience from, can contribute to the society. Due to this belief, we think that APEGA should consider and accommodate foreign-trained engineers and geoscientists for as long as it would not risk the safety of the public. The main purpose of APEGA is to protect and serve the public. Under this purpose, the term “public” refers to everyone including the foreign applicants seeking to legally practice their expertise in Canada. Hence, the association is not only responsible for the safety of the public, but also for its welfare. Similar to some of the Tribunal’s suggestions, We think that it is acceptable for APEGA to provide support to the foreign applicants. This can include matching them with “mentors to guide them in integrating into engineering profession” [9]. We think it would also be beneficial for the applicants to provide them with professional development workshops such as “networking and language training resources” [9]. Such accommodations could give the applicants a better chance of passing NPPE and other required examinations, and hence, of getting their license. In conclusion, We think that accommodations must be granted to foreign applicants, for as long as the safety of the public is not compensated.

References

- [1]"Code of Ethics", Engineers Canada, 2016. [Online]. Available: <https://engineerscanada.ca/code-of-ethics>. [Accessed: 16- Feb- 2018].
- [2]"About APEGA", APEGA. [Online]. Available: <https://www.apega.ca/about-apega/>. [Accessed: 16- Feb- 2018].
- [3]"Jurisdiction & Governance", albertacourts.ca. [Online]. Available: <https://albertacourts.ca/qb/about/jurisdiction-and-governance>. [Accessed: 16- Feb- 2018].
- [4]"About the Commission", albertahumanrights.ab.ca, 2012. [Online]. Available: <https://www.albertahumanrights.ab.ca/about/Pages/about.aspx>. [Accessed: 16- Feb- 2018].
- [5]"Mihaly v Association of Professional Engineers and Geoscientists of Alberta, 2017 ABCA 15", APEGA, 2017. [Online]. Available: <https://www.apega.ca/assets/news-releases/2017-milhaly-court-decision.pdf>. [Accessed: 16- Feb- 2018].
- [6] G. Simone, "Becoming an Engineer in Alberta", *Lethbridge Family Services*, 2018. [Online]. Available: <https://www.lfsfamily.ca/docs/files/BecominganEngineerinAlberta-LFSfamily%20ca.pdf>. [Accessed: 12- Feb- 2018].
- [7] Casey, "Mihaly v. APEGA: Lessons Learned and Strategic Responses by Regulators", *engineerscanada.ca*, 2017. [Online]. Available: <https://engineerscanada.ca/sites/default/files/board/01-Sept-2017-Mihaly-APEGA-Open-Forum-en.pdf>. [Accessed: 10- Feb- 2018].
- [8]"Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII)", canlii.org, 2014. [Online]. Available: <https://www.canlii.org/en/ab/abhrc/doc/2014/2014ahrc1/2014ahrc1.html?searchUrlHash=AAAAAQAGTWIoYWx5AAAAAAAE&resultIndex=2>. [Accessed: 16- Feb- 2018].
- [9]"Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016 ABQB 61", APEGA, 2016. [Online]. Available: <https://www.apega.ca/assets/PDFs/mihaly-decision.pdf>. [Accessed: 16- Feb- 2018]