

SCHULICH
School of Engineering



DEPARTMENT OF ELECTRICAL
AND COMPUTER ENGINEERING

Assignment 1: Case Study
APEGA vs. Ladislav Mihaly
Submitted: February 16th 2018
Course Name: ENGG 513
Names: Liam Birker (10137608) &
Sally Steeves (10125051)
Instructor: Dr. Denis Onen

1. INTRODUCTION

This report is intended to analyze the relationship and court cases between Mr. Ladislav Mihaly and the Association of Professional Engineers and Geoscientists of Alberta, henceforth known as APEGA. This report contains quotes, evidence and a general history of Mr. Mihaly's attempts to be licensed by APEGA. The case and rulings of the Alberta Human Rights Commission as well as the appeal process (initiated by APEGA) and cross-appeal (initiated by Mr. Mihaly) to the Court of Queen's Bench will be covered in detail. A native of the former Czechoslovakia, Mr. Mihaly possesses a Master's degree from the Slovak Technical University in Bratislava with a specialization in technology of fuels and thermal energy, which he intended to use in the oil and gas industry in Alberta. Upon entry to Alberta, Canada, Mr. Mihaly applied for a license in engineering with APEGA. The application was denied numerous times by APEGA. This led Mr. Mihaly to seek the support of the Alberta Human Rights Commission, who in turn sided with Mr. Mihaly and imposed certain sanctions on APEGA. APEGA appealed the verdict to the Queen's Bench Court of Alberta and eventually the sanctions were overturned. This is a very important case as it justified the regulatory and admissions policies administered by APEGA. Additionally, this appeal ruling proved of great significance to all other self-regulating bodies, both provincially and nationally.

2. STAKEHOLDERS

a. APEGA

The Alberta Association of Professional Engineers and Geoscientists Alberta (APEGA) is the governing and regulating body for all engineers and geoscientists in the province of Alberta. They oversee applications by both national and international applicants, and grant professional licenses based on successful applications. Their structure, ethics, and regulation are quintessential to the safety and well-being of the public [1]. APEGA plays a major role in this case as defendants [2]. If they were proven to be in violation of the Alberta Human Rights Act, their entire admission structure would have been re-evaluated [3]. This would also pose questions to the fairness and equity of their admissions policies since the inception of APEGA in 1920. The case also carried a financial implication for APEGA, as Mr. Mihaly has requested lost wages compensation and the restructuring of their admission process would have come with a significant cost [2]. It should be noted that when the trial was proceeding, APEGA was known as The Association of Professional Engineers, Geologists, and Geophysicists of Alberta (APEGGA). In this report, we refer to them by their current name which combines Geologists and Geophysicists into "Geoscientists".

b. The Court of Queen's Bench ("The Court")

The Court of Queen's Bench is constituted by the Court of Queen's Bench Act. The Court is responsible for administering justice and the rule of law in Alberta in civil proceedings, criminal matters, and judicial review of government and tribunal action in Alberta [4]. The latter is relevant to this case study as the Court will make its judgement based off government (APEGA) and tribunal (Alberta Human Rights Commission) action. The Court was brought into this particular case to review the appeal by APEGA and cross-appeal by Mr. Mihaly following the decision of The Alberta Human Rights Commission. The Justice representing The Court is the Honourable Madam Justice J.M. Ross [5].

c. The Alberta Human Rights Commission ("The Commission")

The Alberta Human Rights Commission was formed under the Government of Alberta's Alberta Human Rights Act. The Commission was established to ensure equality in the work structure and environment, and to reduce discrimination. "The purpose of the Alberta Human Rights Act is to ensure that all Albertans are offered an equal opportunity to earn a living, find a place to live, and enjoy services customarily available to the public without discrimination." [6] The Commission received the initial complaints from Mr. Ladislav Mihaly and upon investigation found APEGA guilty of breaching the Alberta Human Rights Act [2]. Their verdict was appealed by APEGA in the Court of Queen's Bench [5].

d. Mr. Ladislav Mihaly

Mr. Ladislav Mihaly is an immigrant to Canada from the former Czechoslovakia. He immigrated to Alberta with intentions to work as a professional engineer in the oil and gas industry, applying for licensing to APEGA in 1999 [2]. Mr. Mihaly is a major stakeholder in this case as he was not only seeking licensing to the profession, but also major financial compensations for lost work [5]. The timelines, proceedings and rulings surrounding Mr. Mihaly's case are detailed in the sections below.

e. The Canadian Public

The general Canadian public, though they may be unaware, were involved greatly in this legal proceeding [7]. The general public often does not know the degree to which professional engineers in Canada are scrutinized prior to licensing. This is done to ensure the safety of the public [1]. The outcome of this trial could have had a negative

impact on the quality of future engineers, notably foreign engineers, in turn jeopardizing the safety and trust of the general Canadian public.

f. Professional Self-Regulating Bodies in Canada

All self-regulating professional bodies in Canada were stakeholders in this case as the verdict could have had implications on their practices. Most provincial engineering bodies have very similar admission requirements and processes to those of APEGA. A negative ruling towards APEGA could cripple the admissions requirements across many self-regulating bodies. This is not limited to engineers but could also include such self-regulating bodies as lawyers and medical practitioners. As such, many of these bodies paid very close attention to this case [3].

g. Engineering Employers of the Province of Alberta

The employers of the Province of Alberta were stakeholders in this case because potential outcomes of this case could have significantly impact their hiring processes. Currently, employers can have a degree of certainty that when they hire a foreign engineer, they can rest assured this person has an education and experience that is at least on par with Canadian standards. Had Mr. Mihaly won this case, it would have seriously undermined the admissions policies of APEGA and imposed doubt into employers hiring APEGA engineers [3]. Employers would likely have had to take extra precaution and extra background checks for foreign engineers applying for positions, knowing that a potentially underqualified applicant may still represent APEGA.

h. Internationally Educated Engineers

The results of this case had the potential to cause significant changes to APEGA's admissions process, particularly for internationally educated engineers. A new application process would likely simplify the process for foreign engineers looking to become accredited in Alberta. Unfortunately, there was also potential for this to lead to workplace discrimination if engineering employers lost confidence in APEGA's licensing process [3].

3. BACKGROUND

As stated previously, Mr. Mihaly is an immigrant to Alberta from the former Czechoslovakia. Mr. Mihaly applied for a license to practice engineering in the province of Alberta under the Association of Professional Engineers and Geoscientists of Alberta (APEGA) in May of 1999 [2]. APEGA requested transcripts from Mr. Mihaly, as is

standard for many of their international applicants who do not come from pre-approved and recognized engineering programs from the Mutual Recognition Agreement (MRA) or Substantially Equivalent institutions [8]. The MRA allows certain pre-approved countries' engineers to be allowed to obtain memberships with fewer examination requirements by APEGA. A foreign worker could be exempt from certain examinations if they possess more than 10 years of engineering work experience, but Mr. Mihaly's work experience was not deemed sufficient to qualify for such an exemption [2]. As Mr. Mihaly obtained his education from a foreign country outside of the MRA, he was required by APEGA to complete three confirmatory examinations and either take a course or pass a test in engineering economics by May 2001. He was also required to write the National Professional Practice Exam ("NPPE", generally regarded as the "Ethics Exam"), a requirement of all applicants regardless of their place of education [8]. He failed the NPPE on January 17, 2000 and did not attend his scheduled re-examination on October 16th, 2000 [2].

In June 2001, APEGA notified Mr. Mihaly that his application would be closed due to failure to write the examinations. From 2002-2003, Mr. Mihaly re-opened his application, was asked to complete his examinations, and again failed the NPPE, twice over that time period [2]. In 2006, after roughly 3 years, Mr. Mihaly asked for his application to be re-opened. APEGA obliged, requesting that an updated resume and list references be sent, given the time that had passed, and opened his application for a third time, again stating he must pass the required examinations. Rather than meeting APEGA's requests to complete the examinations, Mr. Mihaly filed a complaint with the Alberta Human Rights Commission alleging APEGA discriminated against him based on place of origin in violation of the Alberta Human Rights Act, sections 4, 7 and 9 [2].

The Commission found that APEGA's entrance admissions were in fact in violation of the Alberta Human Rights Act because Mr. Mihaly was subject to conditions that were unequal to those of Canadian or MRA educated engineer. The Commission's findings were that APEGA had not taken into consideration the additional challenge the confirmatory and ethical examinations may pose on an engineer from a foreign country, and that their approach assumed that other institutions "are not at par with Canadian engineering accreditation standards" [2]. Mr. Mihaly was awarded \$10,000 in damages, but no compensation for loss of wages. The Commission ruled APEGA was violating Mr. Mihaly's rights under Sections 4 and 9 under the Alberta Human Rights Act; section 7 was found to not be applicable. In addition, the Commission ordered APEGA to re-evaluate Mr. Mihaly's application under a new committee, support Mr. Mihaly's examinations or provide options to by-pass said examinations. APEGA was also to appoint Mr. Mihaly a mentor, networking resources and assist him with his English language proficiency [2].

APEGA, unsatisfied of this verdict, appealed the decision to the Court of Queen's Bench. The self-represented Ladislav Mihaly also filed a cross-appeal, demanding loss of wages compensation of \$1,000,000, or \$2,000,000 in the case he is not accepted through the APEGA admissions and granted a professional license [5]. APEGA based the appeal on the following grounds:

Did the Commission follow rules of procedural fairness when decisions were made upon issues not previously raised by the involved parties?

Did the Commission have authority to determine the grounds of country of origin discrimination based on the place one receives their education?

And finally, was the verdict that APEGA's admission requirements are unjustified an unreasonable verdict?

The Court had three options for verdicts. Either confirm, reverse or change The Commission's previous verdict, or pass the decision back to the Commission with directions. It was concluded by the Honourable J.M. Ross that the Commission's decision shall be reversed. As the cross-appeal was based on the grounds of the original appeal being denied, Mr. Mihaly no longer had a case for lost wages; the cross appeal was rejected [5].

Mr. Ladislav Mihaly, unsatisfied with the overturning of the Commissions verdict filed for an appeal of his own with the Alberta Court of Appeals. He filed the appeal on February 22, 2016 but failed to provide any further case towards why the appeal should be accepted. On June 23, 2016, the appeal was closed for failure to file the appeal in full [9]. On December 15, 2016, Mr. Mihaly brought forth an application to restore the appeal, but was denied for a number of factors, discussed in further detail in the sections below. It is believed by many of the parties involved that this case is now closed [10]. APEGA will not be forced to change, alter, or in any sense modify their admission standards or procedures. Mr. Mihaly is not and has never been licensed by the Association of Professional Engineers and Geoscientists of Alberta [5].

4. THE COURT OF QUEEN'S BENCH DECISION

"APEGA has the statutory responsibility for the registration of international engineers to assure itself of their competency to practice in Alberta without causing harm to the public" [2]. This statement and brief overview of some of APEGA's standards are very important to keep in mind when reviewing the appeal. APEGA's duty is to the public, namely the safety of the public. As a responsible body, the Association will do anything in its power to ensure this safety, and thus must impose strict guidelines to licensing

applicants. Mihaly and the Alberta Human Rights Council argued that APEGA was guilty of unjust prima facie discrimination, meaning discrimination occurred based on the first impression and is accepted as correct until proven otherwise [2]. The Court of Queen's Bench agreed to this argument but recognized that APEGA was justified in the case of their application, as the rule is directly related to the core function of protecting the public. This prima facie discrimination is a measure to uphold the safety of the public and acting otherwise would be unsafe and an unreasonable accommodation [5].

Mr. Mihaly and the Commission also argued based off of the "Meiorin" case, which they deemed to be similar. This case rejected a physical aptitude test biased towards men. Passing the standard did not necessarily correlate to safety in that case, and that the employer wouldn't be affected negatively from alternative testing taking place [5]. The Court of Queen's Bench found that all three of these arguments did not relate to this case and that the Fundamentals of Engineering (FE) exam assessed to Mr. Mihaly were just. No inequalities, except incompetency in engineering, could be proven from the test. Passing the FE exam is in fact quintessential to proving an otherwise unknown level of competency surrounding protecting the safety of the public [5]. Furthermore, Mr. Mihaly never sought an alternative test to the required exams, nor did he write the exams given [2]. This alone was grounds for the Court of Queen's Bench to reject the argument. Similar lawsuits have also attempted to use the "Meiorin" case as reference (Caliao vs. College of Nurses of Ontario), but have also received similar fates as this case [5].

In a similar justification to the "Meiorin" case above, concerning the Commission ordering APEGA to help Mr. Mihaly find alternatives/accommodations to the required examinations, the Court ruled that the Commission failed to previously recognize that Mihaly had never taken the confirmatory exams [5].

5. REFLECTION & OPINION

There are many points of reflection in this case and it is important to be cognizant of bias and discrimination in the licensing of professional engineers. In our opinion, Mr. Mihaly's justification and actions did little to support his case. Mr. Mihaly failed the NPPE three times [2]. The failure of this exam, which is a requirement of any engineer, regardless of their place of education, immediately causes a question of whether or not Mr. Mihaly is suitable to be a professional engineer in Alberta. In our opinion, seeing a successful attempt at this exam would have given credence to the case that APEGA was acting in a discriminatory fashion, as his ethical standards would have been established. Additionally, Mr. Mihaly had stated in an email in 2002 "I am ready to pass

any exam in case if need to be done ... " yet did not attempt a single confirmatory exam that he was assigned [2]. Given Mr. Mihaly's ambiguous ethics, it is hard to find his case to be a professional engineer compelling. However, it is unfair to completely discredit the case for APEGA's rules being discriminatory because the complainant does not meet our expectations.

We disagree with the Commission's decision. The Commission found that APEGA's practices were discriminatory, yet they did not consider the fundamental shift APEGA would have to make to meet their standards. From the perspective of soon to be engineering graduates, this failure to grasp APEGA's role in the protection of the public, called the Commission's judgement of our profession into question, and in doing so may have biased us against recognizing that APEGA could make changes to accommodate foreign trained engineers, at a much smaller scale than the Commission suggested.

Overall, we felt that the Court of Queen's bench decision was valid. We believe that when the education of an engineer cannot be verified through other means, they should face standardized confirmatory examinations; all Canadian engineers, regardless of their place of education, should write ethics exams. It is within APEGA's judgement that they must complete an adequate level of work experience in Canada. These requirements ensure the safety of the public by quantifying their technical and ethical education, and their practical experience under the supervision of a professional engineer.

We also agree with the Alberta Court of Appeal's decision because Mr. Mihaly was unable to provide evidence that there had been any errors in the Court's decision. When there are such strict accreditation rules for Canadian schools, it follows that internationally educated engineers should face the same academic scrutiny.

We believe that APEGA should accommodate foreign engineers and geoscientists. We feel that immigrants have strengthened and will continue to strengthen Canada as a country and as a society. APEGA must continue to include these individuals to reduce bias in our field. However, in our opinion, APEGA is already accommodating foreign professionals. Rather than facing further education in Canada, applicants must simply write confirmatory tests when their academics or work experience cannot be otherwise verified. Beyond this, there may be room for APEGA to consider further accommodations, but they would need to be on a case-by-case basis, where the applicant would be responsible for suggesting alternate accommodations. In terms of the NPPE, we feel that APEGA should not be required to make substantial accommodation, due to the nature of such exam. Although the technical skills engineers gained in foreign countries may be equivalent to those at a Canadian institution, the profession of engineering does not hold the same ethical standing around the world [2].

This is an exam with the explicit purpose to test the ethics of Canadian engineers, it does not examine the technical skills of an individual, but rather their knowledge of professional practice in Canada [11].

6. REFERENCES

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