

ENGG 513

Case Study of the Mihaly v APEGA Court Cases

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Introduction

The purpose of this report is to examine and reflect on the case of APEGA v Mihaly, its path through the Alberta Human Rights Commission, Queens Bench of Canada, and Alberta Court of Appeal and the decisions made by each governing body. There is particularly focus on the decision of the Queens Bench of Canada

The case is based on the claim that APEGA is discriminating against Mr. Ladislav Mihaly based upon his place of origin. He claims that their extra requirements for licensing based on his educational background are a form of discrimination.

The Alberta Human Rights Commission found this to be unreasonable discrimination and ruled in Mr. Mihaly's favour. This ruling was appealed to the Queen's Bench of Canada however where it was ruled to be justified and the decision was reversed. A final appeal to the decision was made by Mr. Mihaly but it was ultimately rejected by the Alberta Court of appeal.

Stakeholders

APEGA

The Association of Professional Engineers and Geoscientists of Alberta (APEGA) provides self-regulation to engineering and geoscience practices in Alberta. The association regulates these practices in-order to ensure that it's members uphold certain professional, technical and ethical standards (APEGA, 2018).

The association was taken to court by Mr. Mihaly on the basis that they were discriminating against him in his attempts to become a licensed Engineer

Mr. Ladislav Mihaly

Mr. Ladislav Mihaly was a Czechoslovakian engineer who had moved to Canada where he applied to APEGA to register as a Professional Engineer. Due to his foreign education he was asked to write various APEGA exams to confirm his ability and experience.

Mr. Mihaly complained to the Alberta Human Rights Commission that these exams were a form of discrimination against him based on his place of origin, which is the basis of the APEGA v Mihaly case (Alberta Human Rights Commission, 2014; Court of Queen's Bench Alberta, 2016).

The Alberta Human Rights Commission

The Alberta Human Rights Commission (AHRC) is an independent commission created to uphold the Alberta Human Rights Act. Their mandate is to foster equality and to reduce discrimination (*Albertahumanrights.Ab.Ca*, 2018).

This commission held the original tribunal and decision for the case of APEGA v Mihaly in 2014

The Court of Queen's Bench

The Court of Queen's Bench (CQB) is the Superior Trial Court for the province of Alberta, handling civil and criminal matters as well as appeals against decisions made by the Provincial Court of Alberta. (*AlbertaCourts.ca*, 2018)

The Court was responsible for making a decision on an appeal made in 2016 against the decision made by the Alberta Human Rights Commission regarding the APEGA v Mihaly case.

The Alberta Court of Appeal

The Alberta Court of Appeal (ACA) is the highest appeal court in Alberta. The court is responsible for hearing various civil and criminal appeals as well as any appeals made against the decisions of the other provincial courts (*AlbertaCourts.ca*, 2018).

In 2017 the Alberta Court of Appeal dismissed an appeal application made by Mr. Mihaly against the decision of the Court of Queen's bench in the APEGA v Mihaly, 2016 case

The Canadian Engineering Accreditation Board

The Canadian Engineering Accreditation Board (CEAB) is responsible for assessing and accrediting undergraduate programs to ensure they meet academic requirements for licensing Professional Engineers in Canada. They work with national and foreign institutions to ensure a baseline equivalency between programs (*Engineers Canada*, 2018).

The board had a large role in evaluating Mr. Mihaly's educational background based on what was known of his institutions programs

Foreign Engineering Programs/Institutions

Any foreign institution offering an engineering program is affected by the decisions made in this case. If it becomes easier for their students to become licensed engineer's in Canada then it will reflect well on that institution. Alternatively, if it stays the same or get's more difficult, the programs may need to be updated to meet the standards set by APEGGA. There may also be significant costs if they wish to become part of an international mobility program as they must be reviewed thoroughly to ensure they meet the academic criteria.

Background

Mr. Ladislav Mihaly was educated and certified as an engineer in Czechoslovakia. In 1999 he immigrated to Canada and applied to APEGA to become licensed as a Professional Engineer. There were no agreements between APEGA and Czechoslovakia institutions and no full accreditation made by the CEAB, so APEGA informed Mr. Mihaly that he would need to pass three confirmatory exams and take a course or exam in engineering economics in addition to the National Professional Practice Exam (NPPE) which all applicant's must take. He failed the NPPE and did not write the confirmatory exams so his application was dismissed.

Mr. Mihaly reactivated his application two more times, but never took all of the required exams while failing the NPPE again. He then filed a complaint against APEGA with the Alberta Human Rights Commission on the basis that APEGA was discriminating against him based on his place of origin or in this case education. The tribunal declared that the requirements of APEGA for Mr. Mihaly to take additional exams and gain Canadian work experience in order to be licensed constituted as discrimination that could not be reasonably justified against his place of origin. The Tribunal declared that Mr. Mihaly was to be awarded \$10,000 in general damages and that APEGA would have to reconsider his application. The tribunal declined to award Mr. Mihaly any lost wages due to uncertainty in any connection to his ability to find work (Alberta Human Rights Commission, 2014; Court of Queen's Bench Alberta, 2016).

Both APEGA and Mr. Mihaly then appealed the decision made by the AHRC to the Queens's Bench Court of Canada. The court re-examined the case and determined that while the extra requirements placed on Mr. Mihaly due to his educational requirements were considered as discrimination on his place of origin, APEGA was justified in doing so. It was determined that it was unreasonably difficult for APEGA to accommodate his educational background due to the responsibility of APEGA to the public safety and upholding high standards and the thoroughness required in determining the engineering competence passed on to him by his educational

institute. As a result, the court ruled that the decision made by the AHRC should be completely reversed (Court of Queen's Bench Alberta, 2016)..

An appeal was again made by Mr. Mihaly on this decision, this time made to the Alberta Court of Appeal. This appeal was rejected however as he did not fully complete the process of placing the appeal. Attempts to restore the appeal were also denied for similar reasons, and the appeal was also examined and found to have not enough to warrant reopening (Court of Appeal of Alberta, 2017).

The Court of Queen's Bench Decision

The Court of Queen's Bench (CQB) was asked to appeal the decision made by the Alberta Human Rights Commission's tribunal to by both APEGA and Mr. Ladislav Mihaly. The decision made by the tribunal was that Mr. Mihaly was being discriminated against his place of origin/education and that he is to be paid \$10,000 in general damages and have his APEGA application reconsidered.

The tribunal declared that the requirements for Mr. Mihaly to take three additional confirmation exams and to gain 1 year of relevant Canadian work experience to be discriminatory. Since he was born, educated and certified as an engineer in Czechoslovakia, the imposing of these additional requirements based on this fact was found by the Queen's Bench Court to indeed be a form of discrimination based on his place of origin. Where the Human Rights tribunal and the CQB differ however is in APEGA's justification of its discrimination.

APEGA justifies its discrimination on the basis that it has to hold high standards for its members to uphold the public safety. The extra confirmatory exams are designed to help ensure this when faced with a lack of information about an applicant's education. The Canadian Engineering Accreditation Board (CEAB) Does very thorough checks and reviews to determine equivalency between engineering programs. Mr. Mihaly's educational institutions never reached out to work with the CEAB to reach an agreement about their academic standards so information was mostly gathered from various open sources. Mr. Mahaly's institution was actually added to the foreign degree list due to its good standing/reputation. This list gave an advantage to Mr. Mihaly by requiring him to write only three extra exams as opposed to nine.

The Queen's Court found these justifications to be sound, stating that it would be unreasonably difficult for APEGA to further investigate Mr. Mihaly's education without a great deal of time and aid from his educational institution. They also found his failure of his National Professional Practice Exam and difficulties securing a job for experience to be unrelated to his place of origin

due to lack of sufficient evidence. As a result of these findings, the QCB ruled that the decision of the Human Rights Tribunal be completely reversed (Court of Queen's Bench Alberta, 2016).

Reflection and Opinion

The Alberta Human Rights Commission and the Court of Queen's Bench both decided that APEGA's extra requirements for applicants from many foreign countries were discriminatory. I agree with this assessment as they are only added based on the location of an applicant's educational institution, a factor which many applicants will have very little control over due to their place of birth. These requirements add extra obstacles that inhibit immigrants from becoming a licensed engineer in Canada.

I do however, support the decision of the Queen's Bench over the Human Rights Commission regarding APEGA's justification in administering the extra requirements. APEGA is a self-regulating association and it aims to maintain high standards in-order to uphold the public safety and other responsibilities of its members. It takes a lot of work to determine if a foreign engineering program is equivalent to a Canadian one. As such I believe that it is unreasonably difficult for APEGA to adequately accommodate applicant's coming from foreign institutions which are not already part of a mobility agreement of some sort. The foreign degree list is a fairly reasonable accommodation for educational institutions which have not reached out to the CEAB for more robust accreditation.

I also agree with the decision of the Court of Appeal to reject Mr. Mihaly's appeal, not only due to the fact he did not complete the process, but to the fact that there is little merit in the appeal. I feel that most of the evidence has already been brought to light and further discussion is unlikely to change the decision made by the Queen's bench as a result.

APEGA absolutely should accommodate foreign-trained engineers and geoscientists, as this encourages diversity within the industry and can bolster the workforce with competent practitioners. The creation of more international mobility agreements would be a good start to this process as it eases and encourages immigration and licensing of foreign engineers. It is difficult to fully accommodate everyone due to differing educational backgrounds and values, but increased infrastructure could potentially allow for a more individualized licensing program.

References

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