

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

Mihaly v Association of Professional Engineers and Geoscientists of Alberta (APEGA)

Name: Madushi Chooramun
UCID: 30038038
Date: 16th February 2018

Instructor: Dr. Denis Onen

Introduction

This assignment is based on the dispute between Mihaly and the Association of Professional Engineers and Geoscientists of Alberta which also included the involvement of the Alberta Human Rights Commission and the Alberta Court of Appeal which was finally dissolved by the decision made by the Court of the Queen's Bench. Mihaly was required to write the confirmatory examinations as required by Section 15 of the Engineers and Geoscientists Professionals Act (EGPR) which was unsuccessful followed by the pressed discriminatory charges with the AHRC against APEGA. The AHRC, based on evidences provided and with their reasoning, ruled in favour of Mr. Mihaly. APEGA then appealed to the Court of Queen's Bench and Mihaly cross-appealed. The Court of Queen's Bench reversed the Tribunal's decision based on a multitude of factors and clarification of the by-laws of both AHRC and APEGA which were omitted and mishandled during the Tribunal's hearing dropping all the discriminatory charges against APEGA. Mihaly then appealed to the Alberta Court of Appeal which was in vain.

Stakeholders

A stakeholder can be defined as an individual or an organization who are actively involved in the project/process and is affected by its execution or results [1]. The stakeholders involved in the Mihaly v APEGA case are as follows:

- **APEGA**

APEGA, also known as the Association of Professional Engineers and Geoscientists of Alberta, is responsible for the licensing of individuals and companies who meet APEGA's standards of professional, ethical and technical competency [2]. Persons and companies who meet the requirement earn their titles and designations such as P.Eng and P.Geo which legally permit them to practise Engineering and Geoscience [2]. APEGA is also responsible to set and regulate practice standards serving the public's best interest [2]. APEGA was responsible to evaluate Mr. Ladislav Mihaly's academic requirements and experience and to decide whether to license him or not [2]. APEGA also claims to support diversity within the geoscience and engineering professions [2].

- **Mr. Ladislav Mihaly**

Mr. Mihaly was born in Czechoslovakia and migrated to Alberta, Canada in May 1999. Since he studied and practised engineering in Czechoslovakia, he applied to APEGA to register as a Professional Engineer in the hope to obtain better opportunities and standards. Mihaly claimed to specialize in the Oil and Gas Industry as he has worked for various companies such as Japan Gas Company, Mitsubishi Heavy Industry, Fluor Daniel etc... accumulating more than 12 years of experience [5]. After three failed attempts at passing the National Professional Practice Exam (NPPE), he filed a complaint with AHRC against APEGA for discriminatory charges based on "his place of origin" [3].

- **The Human Rights Commission of Alberta**

The Human Rights Commission is an organization that protects albertans by promoting equality and reducing discrimination [4]. It settles the complaints of discrimination through human rights tribunal and through court hearings [4]. Mihaly filed his case with the Human Rights Commission which was evaluated.

- **The Court of Queen's Bench**

"The Court of Queen's Bench of Alberta is a superior court of criminal jurisdiction, with the power to try any indictable offence under the Criminal Code of Canada [9] ". The Court of Queen's Bench has the power to make legal decisions over another court or tribunal. It also serves as a plateau to hear appeals from the decisions of tribunals [9].

- **Dean David Lynch**

The first testimony belonged to Dean David Lynch who is the Dean of the Faculty of Engineering at the University of Alberta. Dean David Lynch is a Fellow of Engineers Canada, holds a statutory position on the Board of Examiners of APEGA and is also part of the Canadian Engineering Accreditation Board (CEAB) [5]. Dean David Lynch explained the review, evaluation and determination of accreditation during the assessment of an application. Dean Lynch also explained how countries come into the Mutual Recognition Agreement (MRA) and the processes involved to determine whether these countries fits into the Canadian Accreditation Process [5].

- **Dr. Gary Faulkner**

Dr. Gary Faulkner was the second person to testify. Dr. Faulkner is part of the Board of Examiners of APEGA and explained the role of the CEAB [5]. Details were given about the Board which constitutes of more than 50 members who are academics and who work in the industry [5]. He said that each application is reviewed by the Executive Committee members for two components namely academics and experience [5]. He stated that Mihaly's application was reviewed by 35-40 Executive members before reaching a final conclusion [5].

- **Mr. Mark Tokarik**

Mr. Mark Tokarik has been working with APEGA since 1999 where he occupied the Assistant Director of Registration position, the Director of Registration Position and he is now the Deputy Registrar for APEGA [5]. Mr. Tokarik attested under Section 13(1c) of the EGPR that it is obligatory for an applicant to pass the NPPE as required by the Board of Examiners which is not a technical exam [5]. He also affirmed that the exam materials were available to provide help understanding the content [5]. Mr. Tokarik explained the purpose behind the Foreign Degree List and how it is constantly updated to include new institutions [5].

Background

- **History of the case**

Ladislav Mihaly holds an M.Sc degree from the Slovak Technical University in Bratislava in 1975 and a Certificate of Corrosion Engineering from the Institute of Chemical Technology in Prague in 1981. When APEGA reviewed his application, he was requested to submit his transcripts and was told to write the National Professional Practice Examinations (NPPE). He was then advised to write three confirmatory examinations and a course (or an examination in engineering economics) upon evaluation of his transcripts. Mihaly sat for the NPPE on the 17th Jan 2000 in which he failed. After APEGA reactivated his application, Mihaly re-sat for the examinations which he failed again. APEGA required Mihaly to complete the three confirmatory courses and a course by May 2003. Mihaly rewrote the NPPE for the third time without success [5].

Since Mihaly did not complete the three confirmatory exams within the given deadline, APEGA withdrew his application [3]. After requesting APEGA to reactivate his application, he was requested that he should either complete the three confirmatory courses and a course that were assigned to him or to take the Fundamentals of Engineering Examination (FE). Moreover, on the 10th August 2007, the Board of Examiners determined that he was also required to obtain a year of Canadian Engineering experience. However, Mihaly did not sit for any more examinations and on the 5th August 2008, he filed a discriminatory complaint with the Alberta Human Rights Commission (AHRC) against APEGA. His complaint was based on “his place of origin” which was discriminated against him by APEGA. He filed his complaint under the sections 4,7 and 9 of the Alberta Human Rights Act (AHRA) [3].

- **Alberta Human Rights Commission**

The Tribunal ruled in favour of Mr. Mihaly where it claimed that the standardized process used to evaluate one’s academic credentials should be more individualized which proves to be discriminatory towards Mihaly that cannot be justified under the AHRA [5]. Mihaly was financially struggling while he was attempting to get his license to practice as a Professional Engineer from APEGA. During that period, he had to work low minimum wage jobs despite having previous experience as an engineer and was also trying to support his family. The Tribunal stated that “ Foreign engineering graduates have a barrier to overcome to gain membership with APEGA” [5]. Foreign graduates also find it challenging to understand APEGA’s process and requirements and they have not been prepared in any way [5].

Furthermore, APEGA failed to provide any sort of assistance to Mihaly and there was no attempt to correct any lack of knowledge and skills that Mihaly demonstrated [5]. APEGA did not provide other alternatives that Mihaly could have opted to meet their desired competency and safety. APEGA did not put much effort into an efficient evaluation of Mihaly’s academic credentials as there was no evidence that they tried to contact the associated institution to determine the quality of their programs [3].

Based on the critical points raised, the Tribunal decided to award Mr. Mihaly \$10,000. On top of that, he ordered APEGA to review and reassess Mihaly's transcripts and experience and to contact any available reference so as to recognize the area of expertise which may result into an exemption of the examinations. The Tribunal also claimed that a more individualized approach should be used for the evaluation of Mihaly's credentials where he shall be provided with guidance and assistance to help him integrate into the Engineering Profession. Mihaly was also assigned a mentor possessing a similar background to help overcome the faced challenges. APEGA was also given the responsibility to help Mihaly increase his fluency in English [3].

- **The Court of Queen's Bench**

After the Tribunal's decision, APEGA appealed to the Court of Queen's Bench about the finding of discrimination and Mihaly cross-appealed for \$1,000,000 for his lost wages and \$2,000,000 if APEGA does not offer him membership. According to the Court's Judge June Ross, the Tribunal's conclusion is full of errors and the arguments brought are not supported by evidence and related discussions were omitted [6]. Judge June Ross affirmed that the Tribunal's decision shall be reversed and asserted that no form of discrimination were demonstrated by APEGA towards Mihaly and closed the case [6].

- **The Alberta Court of Appeal**

After the Court of Queen's Bench Judge June Ross concluded to reverse the Alberta Human Rights Commission's decision, Mr. Mihaly appealed to the Alberta Court of Appeal which was dismissed [6] because Mihaly failed to follow up [6]. Justice Frans Slatter stated that Mihaly did not point out to any error regarding the patent and also added that even Canadian Institutions must prove their equivalency to meet the standards [6].

The Court of Queen's Bench decision

- **The Court of Queen's Bench reasoning behind decision**

As per Section 15 of the Engineering and Geoscience Professions Act (EGPR), an individual has to be a Canadian Citizen or Permanent Resident, has good morals and character, should know the practice of Engineering or Geoscience which can be proved by writing the necessary examinations such as the FE or NPPE examinations, should be fluent in English and possess the required academic qualifications and experience to be eligible to register as a member of APEGA. As per APEGA, academic requirements can be fulfilled from an accredited institution or by the completion of necessary examinations.

Dr. David Lynch witnessed on behalf of APEGA regarding their registration processes [3] and testified that confirmatory examinations are set because APEGA expects to see that both an individual who has graduated from an accredited institution and an individual who has not graduated from an accredited institution or a Mutually

Recognized Institution (MRI) hold the same knowledge and skills [5]. Dr. Lynch also validates a strict scrutiny of “quality checking, quality management and quality assurance” [3] before the credentials of a candidate is recognized. This is done to ensure that every graduate meets the requirement [3,5].

Dr. Gary Faulkner was presented as the second witness on behalf of APEGA. Dr. Faulkner reviewed Mihaly’s transcripts and deduced that his Master’s degree is equivalent to a Bachelor’s degree according to the Foreign Degree list [5]. Mihaly claimed that he specialized in Oil and Gas but Dr. Faulkner pointed out that his degree was closer to Chemical Engineering rather than Petroleum Engineering [5]. Mihaly was therefore assigned 2 Chemical Engineering related examinations from Group A, one examination from Group B and to take Engineering Economics. APEGA would recognize Mihaly as a Professional Engineer only when he passes the exams. However Mihaly refused to sit for any of the examinations proposed to him [5].

The third witness on behalf of APEGA was Mr. Mark Tokarik who specified that all the necessary information regarding the registering as a Professional Engineer is found on the website which comprises of eight videos and brochures in the pdf format which is accessible to all [5]. He also testifies that any international educated graduate is allowed to work under the supervision of a licensed Professional Engineer and Geoscientist to obtain the Canadian experience. The NPPE examinations constitute of questions that test the knowledge on multiple areas such as ethics, professional practice, law and management which is mandatory for an engineer to be aware of [5]. There are also academic resources that are available that will help one prepare for the examinations such as a study kit, sample exam questions and other various study materials. In spite of having the necessary resources to study for the exam, Mr. Mihaly failed three times [3,5].

Mihaly also wrote to the AHRC stating that he did in fact passed the NPPE examinations on the 16th October 2000. But no evidence was put forward to prove his words. On the contrary, APEGA’s records indicated that Mihaly was absent during the NPPE examinations held on 16th October 2000 [5].

The Judge claimed that the discriminatory charge based on the “place of origin” bear no evidence. As described by the witnesses, any applicant irrespective of where they come from, has to write the NPPE examinations if they do not satisfy Section 15 of the EGPR. There is also no evidence that Mihaly’s “place of origin” posed as a barrier to the completion of the requirements [3]. Nevertheless, there is evidence that Mihaly failed the examinations three times which is also not related to his “place of origin” [3].

The Tribunal stated as per Section 8 of the EGPR that APEGA is required by law to remedy the situation with the “purpose of correcting a perceived academic deficiency in an applicant”. The Tribunal recognized that the individual assessment of each application provides only some understanding of the candidate’s background but not the wholesome of it. The Tribunal concluded that since the assessment of transcripts were only to classify the individual in his respective pool, Section 8 of the EGPR was not

followed. However, the Court identified the Tribunal's interpretation of Section 8 of the EGPR was illogical by saying that the goal of the assigned examinations are not meant to "correct an academic deficiency" but Mr. Mihaly was a registered candidate who was required to complete the examinations so that APEGA can assess his competence relating to the program since not enough information was obtained [3].

The Tribunal also mentioned that APEGA did not reach out to the institutions in order to gain more information about the candidate and to discuss the accreditation of their programs. The Court refuted the idea of wasting APEGA's time and resources to invest in several thousands of universities found on the Foreign Degree list to assess their program equivalence. This task proves to be beyond the scope of many professional bodies [3] which involves not only APEGA but also National and International organizations [3].

The Tribunal also correlated the Meoirin case to Mihaly's which was again proved to be illogical to the Court. In Meoirin's case, it is a biological factor that played a significant role where most women have lower aerobic capacity than men. Whereas in Mihaly's case, Mr. Mark Tokarik claimed that the pass rate is about 85% which can be retaken if one fails. Therefore, it is either one knows the material that a Professional Engineer is expected to know or he does not. There is simply no in between. In addition, one cannot know the result without sitting for the examination and Mihaly never sat for any of the confirmatory examinations. The Court's Judge also mentioned that all engineers, irrespective of where they come from, are expected to have the knowledge that forms the basis of the profession [3].

Then, APEGA was also ordered to explore other options to individually assess Mihaly's qualifications and credentials [5]. According to the Judge, the Tribunal is "way beyond the scope of any discriminatory conduct" [3] which will curb APEGA's resources if realized and will also lower its standards. Implementing a standardized testing would result into inconsistency, costly and inefficient results. Moreover, Mihaly did not also proceed with an internal appeal of APEGA's decision and neither Mihaly nor the Tribunal produced evidence to prove APEGA's decision wrong. The Tribunal also stresses on the fact that International Educated Graduates face great challenges when they come to Canada. However, based on the evidence provided by APEGA, out of 1500 applications, 60% are able to successfully register as a member [3,5].

Not only examinations are a way to determine one's competency but they also ensure a safe practice towards the welfare of the public. The Tribunal did not consider any other ways but gave Mihaly the opportunity to challenge writing the examinations [3]. The Court of Queen's Bench concluded that the Tribunal's decision shall be reversed due to a lack of evidence and unreasonable assessment on behalf of the Tribunal under the Alberta Human Rights Act. Since the discriminatory charges were waived against APEGA, Mihaly's cross-appeal was also dismissed [3,6].

Reflection and Opinion

I am generally opposed to writing standardized tests especially when it comes to High School education system where one cannot prove himself through a test which fits all. I believe everyone has their own potential and capability and should be individually treated to provide the chance to explore their talent. Einstein said “ you cannot judge a fish by its ability to climb a tree.” However, the FE examinations or the NPPE are the standardized tests to assess the capabilities of what an engineer is expected to know. In this case, we are all in the same boat and we are all known or will be known as engineers. Engineer is a term that is reserved for those who only satisfies the criteria. An engineer needs to know what needs to be known and I believe there’s no way around it.

The Alberta Human Rights Commission raised a conglomerate of points and perspectives which some were undeniably unreasonable but on the other hand, some of them can be tweaked and adjusted to put into practice for a more satisfactory and efficient result. The Tribunal proposed an individualized test due to that fact that sometimes Internationally Educated Graduates sometimes prove to have a language barrier to overcome which deters them from giving their best in the examinations. Nonetheless, before moving to Canada, one must be aware of the language requirements and need to be comfortable in either English or French to successfully engage in their engineering professions.

Additionally, the Tribunal also mentioned that APEGA reviewed the candidate’s transcripts and resumes just to fit them into their respective categories which was counterargued by APEGA stating that there was a lack of evidence from their transcripts to exempt them from the examinations. Along with the institution’s transcripts, I believe APEGA should also demand the course syllabuses which provide a more detailed outline of the subject topics. Transcripts usually just contain the course name and the grades. International and Canadian Institutions may teach the same course material but the courses bear different names which APEGA will be unaware of. I can personally relate to this since I am an international student and my friends back home share common knowledge of the same subject but acquired it through different course names.

I completely disagree with the Tribunal’s decision to reassess Mihaly’s transcripts and to even assist him with a mentor. APEGA is known throughout the country for the high standards set and lowering its standards for Mihaly would undoubtedly raise controversial issues not only among the professionals but also among the public. Questions would be raised to how APEGA allowed an individual become a Professional Engineer who failed the NPPE three times. Knowing the basics of your profession is mandatory not only for the individual’s sake but also the safety of the public depends greatly on it. In this matter, the Court of the Queen’s Bench made the right decision to reverse the Tribunal’s verdict.

Mihaly sat for his first NPPE exams 17 years ago and had he been more serious and worked for it, he would have perhaps been a practicing engineer today. He failed

his exams thrice after which he wrote his complaint against APEGA. Mihaly also wrote to the Tribunal that he believed that he passed the NPPE. I understand failing an exam may be overwhelming and can discourage a person to move forward especially if you are an international and not acquainted to how the system works. I believe APEGA should introduce some type of crash course which will familiarize the curriculum of the examinations such as ethics, management, etc... APEGA should have also taken the responsibility to show Mr. Mihaly his past exam papers and point out his mistakes. Additionally, some sort of guidance should have also been provided.

I strongly believe had the Court allowed Mihaly's case to win, this would have definitely resulted into similar cases with candidates being allowed the membership into APEGA.

APEGA should definitely accommodate foreign-trained engineers and geoscientists increasing the diversity of the pool of experts. However, according to Ian Martin's website, around 90% of employers believe that international applicants normally possess a language barrier [7] which increases the difficulty of an international-trained person to get a job. In a study, it was also found that employers do not necessarily focus on the applicant's technical knowledge but rather on the cultural and behavioural fit [7]. A survey done in 2006 showed that there were 1525 cab drivers with a Master degree [8]. It is kind of unfair to encourage educated internationals about a more promising future in Canada where they are not allowed to practice their profession [8].

APEGA can start a 'bridging program' which is currently being taught by Ryerson University in Ontario which was initially being funded by the federal and provincial government [8] . This program will help integrate internationally educated graduates to familiarize with the system. Basically, the university provides individualized study programs which will assist and help the candidates overcome the accreditation hurdle [8]. APEGA can collaborate with University of Alberta and University of Calgary to employ this method.

References

- [1] Dr. G.Jergeas, *Project Management for Engineers: Stakeholder*, Calgary, Alberta, 2017.
- [2] Association of Professional Engineers and Geoscientists of Alberta. *About APEGA* [online]. Available: <https://www.apega.ca/about-apega/>
- [3] The Court of Queen's Bench. (2016, Jan. 26). *Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016 AB 61* [online]. Available: <https://www.apega.ca/assets/PDFs/mihaly-decision.pdf>
- [4] Alberta Human Rights Commission. (2012, Oct. 24). *About the Commission* [online]. Available: <https://www.albertahumanrights.ab.ca/about/Pages/about.aspx>
- [5] Human Rights Tribunals of Alberta. (2018, February. 06). *Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014 AHRC 1 (CanLII)* [online]. Available: <https://www.canlii.org/en/ab/abhrc/doc/2014/2014ahrc1/2014ahrc1.html?search>
- [6] J. Cotter. (2017, Jan). Alberta Court of Appeal won't restore foreign-trained engineer's appeal. *Canadian Press* [online]. Available: <http://www.cbc.ca/news/canada/calgary/ladislav-mihaly-engineers-alberta-foreign-1.3933845>
- [7] S.Russell. (2014, Sept). Why immigrant engineers are not finding jobs. *Ian Martin* [online]. Available: <https://ianmartin.com/immigrant-engineers-arent-finding-jobs/>
- [8] S. Gordon. (2016, Oct). Bridging programs help foreign-trained professionals gain accreditation. *University Affairs/ Affaires Universities* [online]. Available: <https://www.universityaffairs.ca/features/feature-article/bridging-programs-help-foreign-trained-professionals-gain-accreditation/>
- [9] Court of Queen's Bench of Alberta. *JURISDICTION & GOVERNANCE* [online]. Available: <https://albertacourts.ca/qb/about/jurisdiction-and-governance>