

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

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Understand and Analyzing the Case of Ladislav Mihaly vs. APEGA

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Introduction

Mihaly vs. APEGA is an ethically controversial case. Mr. Ladislav Mihaly applied to be a professional engineer with APEGA as a foreign trained and educated engineer. When APEGA analyzed his profile they determined that in order to confirm his education he would be required to write the National Professional Practice Exam (NPPE), three confirmatory exams with an equivalent of an Engineering Economics course or the Fundamentals of Engineering exam, and complete one year of relevant Canadian experience. After failing to find a position as an engineer in training and not passing the NPPE several times Mr. Mihaly decided to file a claim with the Alberta Human Rights Commission claiming that asking him to meet these requirements discriminated against his place of origin. A Tribunal of the Human Rights Commission presided over the case and determined that the requirements held by APEGA were, in fact, discriminatory and reparations were required. APEGA appealed the case to the Court of Queen's Bench, who fully overturned the verdict, while Mr. Mihaly cross appealed for more reparations. After the Queen's Bench decision, Mr. Mihaly filed an appeal to the Court of Appeal but was promptly turned down by the Court. The entire process will be analyzed further resulting in an educated opinion formed by the writers.

Stakeholders

Mr. Ladislav Mihaly

Mr. Ladislav Mihaly is a Czechoslovakian engineer that came to Canada and tried to get certified through APEGA to become a certified engineer in 1999 [6]. Mr. Mihaly failed two attempts at the APEGA certification test and did not make it to another [1]. Mr. Mihaly filed a complaint with The Alberta Human Rights Commission in 2008 for discrimination [1]. Mr. Mihaly's claim is that APEGA discriminated against his education because of his origin and therefore it was discrimination to make him write the test [4].

Association of Professional Engineers and Geoscientists of Alberta (APEGA)

APEGA is the official self-governing body for licensing of professional engineers and geoscientists in Alberta. They maintain the standards for practice, code of conduct, and ethics for the professions. It is also their duty to licence qualified engineers and geoscientists when they meet the requirement expectations [13]. This includes certifying that the engineers that enter into the country and wish to continue their practice meet the Alberta standards. APEGA is being accused of unfair testing requirements being required of Mr. Mihaly due to his place of origin.

The Alberta Human Rights Commission

The Alberta Human Rights Commission is a group that enforces and upholds The Alberta Human Rights Act [2]. The Commission is appointed by the government and their mandate is to, “foster equality and reduce discrimination” [3]. The Commission is important to the Mihaly case because they are the channel that the discrimination complaint was lodged through. They also held the tribunal that made the original decision in the case [4].

The Court of Queen’s Bench

The Court of Queen’s Bench is the Superior Trial Court for the province. They are responsible for hearing all civil and criminal matters residing in the province of Alberta [12]. When both APEGA and Mr. Mihaly sought to apply for appeals they were sent to the Queen’s Bench for the decision.

The Court of Appeal

The Court of Appeal presides over any appeals filed from the decisions made by the Court of Queen’s Bench [14]. They are also responsible appeals that could be filed by a tribunal like the one from the Alberta Human Rights Commission. After the Court of Queen’s Bench overturned the tribunal decision, Mr. Mihaly appealed to the Court of Appeal about the decision.

Foreign Universities

Foreign universities can either benefit or suffer from the outcome of this case. There are certain foreign universities that are seen as “accredited” by APEGA and the degrees obtained from them are seen as equivalent of one from an accredited Canadian university [5]. Mr. Mihaly’s educational institution was on the Canadian Council of Professional Engineers Foreign Degree List, but all engineers have to take the NPPE. This could affect which institutions are seen as equivalent of Canadian accredited universities.

Other Provincial Self-Regulated Engineering Associations

Canadian provincial and territorial accreditation programs are the councils that say whether an engineer is properly trained to work as a Professional Engineer in that province/territory. The groups could come under scrutiny for their regulations, depending on

the outcome of the Mihaly case. If it is ruled that APEGA was being discriminatory then it could possibly come to pass that the rules for applications could become more stringent.

Internationally Educated Engineers

If it is seen that international universities are not equivalent of accredited Canadian universities there could be even more internationally educated engineers that are not accredited within Canada because taking the tests to become accredited are seen as too much work. The volume of qualified individuals that are working in simple positions would increase, as well as the possibility of malpractice claims. If the qualifications to become accredited are more stringent, many people might just decide to stay as a technologist, despite their higher education that would qualify them as a Professional Engineer in their country of education.

Background

Mr. Mihaly is a Czechoslovakian engineer with Masters degrees from the Slovak University of Technology in Bratislava and the Institute of Technical Technology in Prague [1]. These institutes are on the Canadian Council of Professional Engineers Foreign Degrees List (FDL) [5]. This means that these institutes are seen as equivalent of an Canadian accredited university and APEGA only requires individuals from these institutes to write the National Professional Practice Exam (NPPE) [5]. The NPPE is not a technical exam, but a test of professionalism, ethics, professional practice, communication, law for professional practice, professional law, and regulation and discipline processes [15]. Mr. Mihaly was asked to write the NPPE as well as three confirmatory examinations and take a course, or pass an equivalent Engineering Economics exam, due to his references having only known him for a short amount of time as well as his “long but narrow experience” [1].

Mr. Mihaly did not pass the NPPE on his first attempt in 2000, failed to attend the second testing of the NPPE, and did not complete the required courses before the deadline of May 2001 and his application was withdrawn [1]. The second attempt at the exam Mr. Mihaly was unable to make it to due to injury.

In 2002 Mr. Mihaly applied to re-activate his application [1]. On the third scheduled attempt of the NPPE Mr. Mihaly again failed as well as not completing the required confirmatory courses by May 2003 and the Engineering Economics exam by November 2003 [1]. The three confirmatory courses were requested by APEGA because the Chemical Engineering degree from Bratislava did not meet APEGA’s academic requirements [6]. The Bratislava university is on the FDL and because of this Mr. Mihaly was not required to write nine

examinations. Mr. Mihaly asked to appeal the exams because he had twelve years of international experience, he was given the appeal form but did not file it [1].

October 2006 Mr. Mihaly asked APEGA to reactivate his application again [1]. APEGA let Mr. Mihaly know that they would require an updated resume and references. Mr. Mihaly had worked for a professional engineer for more than a year and submitted their information. APEGA said that Mr. Mihaly had not worked at an acceptable D level North American engineering position for the year and still needed a year of acceptable D level North American engineering experience [1]. APEGA also again requested that Mr. Mihaly take three confirmatory exams and Engineering Economics course or pass an equivalent exam [1]. Mr. Mihaly did not write the required exams.

Mr. Mihaly initially filed a claim through the Alberta Human Rights Committee in 2008 for discrimination against his “place of origin of academic qualifications” [1]. APEGA appealed that the Committee could not review it because place of origin is different than place of origin of academic qualifications. The Committee said that place of origin is a broad enough term that they could take the case.

When the claim was filed it went through a tribunal with the Human Rights Commission in Alberta [1]. The original findings of the tribunal were that Mr. Mihaly had indeed faced discrimination due to place of origin. To that extent the tribunal ordered APEGA to grant Mr. Mihaly \$10, 000 in damages and required them to reevaluate his credentials as an engineer [5]. This reevaluation included a committee that would find alternate solutions to the deficiencies that could arise in Mr. Mihaly’s education that do not require him to take any courses or exams [5]. APEGA was also asked to provide a mentor that could assist Mr. Mihaly in his transition to Canadian professional engineering [5]. The tribunal did decide against awarding Mr. Mihaly lost wages as he could not prove that the discrimination connected to lost wages [5].

The Court of Queen’s Bench Decision

Neither party was content with this solution and both chose to file appeals with the Court of Queen’s Bench with APEGA filing the appeal and Mr. Mihaly filing the cross-appeal [8][9]. APEGA applied for the whole decision to be overturned while Mr. Mihaly filed to be awarded \$1,000,000 and a professional designation or \$2,000,000 without designation [8].

The appeal made brought forth four major points to the Court of Queen’s Bench; Procedural Fairness, Jurisdiction, *Prima Facie* discrimination, and Justification [8]. The court

analyzes these with respect to the tribunal as well as to other cases with similar circumstances to fairly determine whether the tribunal was right in their ruling or not.

Procedural fairness is the concept that the decision maker is required to impart an unbiased decision based solely on the content presented and not on facts not presented to the court [10]. APEGA proposed that the tribunal made decisions on sections of the *Engineering and Geoscientists Professional General Regulations [EGPR]* that were not raised by either party during the trial. The grounds of this infraction stand on APEGA declaring that neither party had opportunity to comment on that section of the act and therefore procedural fairness was not followed [8]. The Court analyzed this situation and decided that the parties are only given an opportunity to comment on new introduced 'grounds', where this section of the *EGPR* does not qualify. It was decided that procedural fairness was not breached [8].

APEGA's next point argued that the tribunal did not have jurisdiction over the case in the first place [8]. The argument stated that the Alberta Human Rights Commission did not have standing over discrimination based on "origin of academic qualifications". APEGA submitted a case they considered to be similar that argued that where someone comes from is not the same as where someone received their education. The Court however decided that the case faced very different situations and therefore this did not apply [8].

At the tribunal Mr. Mihaly was required to prove *prima facie* discrimination, which the tribunal decided he did. Essentially, he was required to prove that APEGA discriminated against him based on his origin. The tribunal found that APEGA's rules of requiring graduates of institutes not extensively certified by a Canadian accreditation is discrimination against the place of origin. The Court however, saw it differently. APEGA is not discriminating against post-secondary educational institutes based on origin. They cannot simply accept the degrees due to lack of knowledge about the program and its similarities to Canadian accredited programs [8]. The tests are simply a way for APEGA to confirm that the knowledge level is the same. So, although asking Mr. Mihaly to take the tests is an adverse effect to his place of origin, it is not due to discrimination, but purely out of lack of confirmed knowledge due to his place of education [8]. To this extent, the Court considered the application of determining discriminations incomplete [8].

In addition, the tribunal decided that making Mr. Mihaly write the NPPE exam, the FE exam, the confirmatory exams, and complete one year of relevant Canadian experience was discrimination based on place of origin. This is not entirely true, the Court decided, since all licensed APEGA engineers must have one year of Canadian experience and write the NPPE [8]. Mr. Mihaly failed the NPPE several times, which is determinedly not related to the

discrimination because of the number of foreign licensed engineers already in APEGA. Given all this, the Court found the tribunal's decision of *prima facie* discrimination incorrect as it failed to consider the requirements of all licensed engineers and applied the concept of determining *prima facie* discrimination incorrectly [8].

Finally, APEGA put forth that the tribunal's finding of the licensing requirements being discriminatory unjustified [8]. For the licensing to be justified it needs to be necessary, related to a goal or purpose, and used in good faith [8]. The tribunal found all acceptable except that the testing is not necessary, which implies that APEGA could accept Mr. Mihaly without undue hardship. The tribunal decided APEGA should have individual tests for Mr. Mihaly tailored to his potential academic deficiencies. The tribunal also continued to say that APEGA should be more active in understanding the qualifications of foreign universities and their graduates. It was noted by the Court that APEGA does not use the tests for academic deficiencies but simply to understand the education level of individual engineers, and the NPPE is still required by all engineers. Furthermore, the tribunal went on to declare that asking Mr. Mihaly to write a standardized exam like the FE is unreasonable. APEGA and the Court found otherwise, having the test acknowledges that examinees have a level similar to and education at a Canadian institution, thereby confirming the engineers have the knowledge required to be an engineer of their qualifications. The Court decided that the tribunal made conclusions based on no evidence and ordered APEGA to alter their regulatory acts for Mr. Mihaly, neither of which was considered acceptable by the Court [8].

In conclusion, the Court decided to entirely reverse the tribunal's decision, without remitting the case back to them [8]. It was clear to the Court that although the tribunal followed procedural fairness and had jurisdiction, they incorrectly determined *prima facie* discrimination and required undue hardship of APEGA in their decision.

Mr. Mihaly attempted to appeal this decision through the Court of Appeal [11]. Due to his inability to follow up with his appeal it was promptly dropped. The Court of Appeal also agreed with the Court of Queen's Bench in believing the APEGA requirements are fair.

Reflection and Opinion

Having researched the case of Mihaly vs. APEGA it is of the authors' opinion that Mr. Mihaly wished to bypass the requirements to be a professional engineer due to the fact that he could not pass the NPPE. The focus of the authors dispute with the complaint filed is that even though Mr. Mihaly was asked to write some confirmatory exams, they do not have the qualifications or knowledge to form an opinion on whether they are fair. However, the

confirmatory exams affect foreign universities because even if they are on the FDL they might still not be viewed as being the same level of education as an accredited Canadian university. Foreign engineers are also affected because despite having attended a university on the FDL they may still be asked to write confirmatory exams.

The NPPE is a test that every engineer in Canada is required to write, even engineers that are educated at an accredited Canadian university [6]. The NPPE does not test the skills of the engineers, but the ethics and understanding of the laws. In the authors' opinion there is no discrimination in the NPPE, other than asking the writer to be able to read and write English. Asking an applicant to have a working understanding of the native language of the country they will be working in is expected in any country and a help when interacting with clients. Failure of the NPPE will bar anyone from becoming a certified engineer in Canada.

It is of the opinion of the authors that Mr. Mihaly should not be allowed to practice as a Professional Engineer in either Canada or Alberta due to his failure of the NPPE. Whether the confirmatory exams and courses were discriminatory due to Mr. Mihaly's place of education origin are not seen as an important part of the case ruling. While they may be necessary for Mr. Mihaly to do them to prove that his education and knowledge is enough, they are not the major point that is keeping him from becoming a Professional Engineer.

APEGA could have suffered some severe fallout from the case if the original ruling of the tribunal had not been overturned by the Court of Queen's Bench. The original ruling that Mr. Mihaly had faced discrimination and was granted the \$10, 000 in damages and having APEGA re-evaluate his credentials, and if there were deficiencies that Mr. Mihaly not have to write any exams. While these steps may have been fair had Mr. Mihaly only been denied approval due to his education and not the failing of the NPPE, this was not the case. Had the complaint been filed with Mr. Mihaly having passed the NPPE APEGA would have been under more scrutiny for discrimination.

The authors found that their opinions on the case varied dramatically with their understanding of the case. Originally, it was thought that Mr. Mihaly had a case in the facts that he should not have to write extra exams simply because of his place of academic origins. However, once further researched the authors determined that the only exam Mr. Mihaly had failed was the one everyone is required to write. After learning this fact it became evident that Mr. Mihaly did not file because he felt discriminated against and simply couldn't manage to get his certification. Giving any person, like Mr. Mihaly, who wishes to find a loophole around the knowledge required to be an engineer a license endangers the population and any project they may work on. The authors are very glad the appeal overturned the original decision.

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