

ENGG 513

Mihaly Case Study Report

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Introduction

This report is based upon the case study of Mr. Mihaly vs APEGA and the involvement of the Alberta Human Rights Commission, The Court of Queen's Bench of Alberta, and the Alberta Court of Appeal. It outlines APEGA's accreditation process for both Canadian and International Schools alike and provides insight into the requirements to become a registered professional engineer.

Mr. Mihaly immigrated to Canada in 1999 with a previous educational background in engineering. In 1999 he applied to become a registered professional engineer with APEGA. He was advised that he was required to take multiple entrance exams to confirm his proficiency in the profession. Upon failing to complete these exams, Mr. Mihaly filed a complaint with the Alberta Human Rights Commission claiming he was discriminated upon based on his country of origin. The Tribunal confirmed that he was discriminated against under *prima facie* and ordered APEGA to reconsider Mr. Mihaly's application without the need to complete the entrance exams. APEGA then appealed to The Court of Queen's Bench which reversed the Tribunal's decision. Mihaly followed up with the Alberta Court of Appeal, but his appeal was dropped.

This paper will further examine the details of this case and provide insight into reasons for the decisions that were made by the stakeholders. Furthermore, the personal opinion of the reporters will be given discussing the decisions made by The Court of Queen's Bench, and APEGA's foreign-trained professionals entrance standards.

Stakeholders

APEGA

Association of Professional Engineers, Geoscientists of Alberta is a provincial organization that regulates the practices of professional engineering and geoscience in Alberta. APEGA's mandate is setting practice standards, and determining disciplinary actions, when necessary, for its members. The ruling in the case of Mr. Mihaly vs APEGA is crucial as it either validates the authority of APEGA to standardize the practice of professional engineering and geoscience or it could strip APEGA of its duties in future cases resembling Mr. Mihaly's, disregarding the set metric of measurement of skills and knowledge of the profession.

Mr. Ladislav Mihaly

Mr. Ladislav Mihaly was born and educated in the former Czechoslovakia. He obtained a M.Sc. Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University in 1975, and then went on to obtain a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague in 1981. In May 1999 he immigrated to Canada and applied to APEGA for recognition as a Professional Engineer within the province of Alberta. APEGA acknowledged Mr. Mihaly's application and advised him that he was required to write several exams confirming his competency in the field of engineering. Mr. Mihaly attempted the

confirmation exams several times and received a failing grade each time. On August 5, 2008, Mr. Mihaly filed a complaint against APEGA with the Alberta Human Rights Commission, alleging that APEGA had discriminated against him based upon his country of origin.

The Alberta Human Rights Commission

The Alberta Human Rights Commission is an independent commission created by the Government of Alberta. Its mandate is to foster equality and reduce discrimination. It fulfills this mandate through several manners, including human rights tribunal and court hearings. The commission yearns to uphold the Alberta Human Rights Act, which protects Albertans from discrimination, and ensures 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 [1].

The Court of Queen's Bench

The Court of Queen's Bench is the superior court of the Canadian province of Alberta. The Court conducts criminal matters, civil proceedings and the judicial review of government and tribunal action in Alberta. APEGA appealed the decision of the Alberta Human Rights Tribunal, concluding that Mr. Mihaly had been discriminated against by the association, and so the matter was reviewed by the Court of Queen's Bench. The Court of Queen's Bench has the power to: a) confirm, reverse or vary the order of the human rights tribunal, or b) reverse the matter back to the tribunal with directions [2].

Canadian Companies that Hire Engineers

Canadian Companies hire engineers to work in vast array of industries; anywhere from construction of infrastructure projects to working in the oil sands. Generally, companies tend to place engineers with P. Engg designation in roles with responsibility. If the utmost standard of professional engineering is not maintained, the quality of work might dwindle. In a worst case scenario, an accident caused by an uninformed engineer could cause a loss of millions of dollars for a Canadian company, or even endanger the public's health.

Future Engineers Migrating to Canada

Due to the booming automotive and oil sands industry, Canada attracts a lot of engineering talent. A vast number of workers have been trained abroad and receive professional engineering status in Canada. The decision of Mihaly vs APEGA could undermine the professional aptitude and Canadian Standard for becoming a responsible engineer. In the most severe case, the P. Engg designation would lose its status. Future engineers migrating to Canada would argue that due to their place of origin and education, a specialized approach to evaluating professional status needs to be considered.

Individual Provincial Associations that Regulate Engineering Practices

Each province in Canada regulates the licensing of engineering practice. In Alberta we have APEGA (Association of Professional Engineers, Geoscientists of Alberta), similarly Ontario has PEO (Professional Engineers of Ontario). The Court of Queen's Bench and

Alberta Human Rights Commission are provincial organizations of Alberta, their ruling in the Mihaly vs APEGA case could set the stage for how this issue will be dealt with going forward. Other provincial organization may have to change their entire mandate if a ruling is made against APEGA. Other provincial organizations will lose significant power over how

Background

Mr. Ladislav Mihaly was born and raised in the former Czechoslovakia. He obtained an M.Sc Diploma with a specialization in Technology of Fuels and Thermal Energy from the Slovak Technical University in Bratislava in 1975. He obtained a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague in 1981.

Upon immigrating to Canada in 1999, Mr. Mihaly applied to APEGA to register as a Professional Engineer. As per APEGA standards, Mr. Mihaly was required to write the National Professional Practice Exam (NPPE). Unfortunately Mr. Mihaly failed the NPPE exam, which he wrote on January 17th, 2000. Mr. Mihaly scheduled to rewrite the NPPE exam but failed to attend the exam. Mr. Mihaly failed on his second attempt to write the NPPE exam in 2002. Mr. Mihaly again sat the NPPE on January 20, 2003 and failed again for the third time.

Mr. Mihaly did not write the required examinations and in August 2008, he filed a complaint with the Alberta Human Rights Commission, alleging that APEGA discriminated against him based on his place of origin when it denied him registration as a professional engineer.

The Human Rights Tribunal found that examination standard and experience standard used by APEGA to assess Mr. Mihaly's educational credentials failed to have a more individualized assessment or exploration of other options and constituted as discrimination. The Tribunal awarded Mr. Mihaly \$10,000 in general damages and ordered APEGA to reconsider Mr. Mihaly's application.

The Tribunal found APEGA's policies were based on the discriminatory assumption that engineers with qualifications from foreign countries are not at par with Canadian engineering accreditation standards.

This decision by the Tribunal was under appeal and cross-appeal by APEGA and Mr. Mihaly, respectively.

The Court of Queen's Bench Justice upheld APEGA's appeal of Alberta Human Rights Commission (AHRC) Tribunal's decision in allegations made by Ladislav Mihaly. Queen's Bench Justice June Ross said that the Tribunal's ruling contained errors and was unreasonable.

"The Tribunal's reasons leading to (the chairman's) conclusion that APEGA could have accommodated Mr. Mihaly and others sharing his characteristics are rife with logical

errors, findings of fact that are not supported by evidence and failure to take into account relevant consideration. I conclude that the decision of the tribunal should be reversed [3].”

The Court of Queen’s Bench Decision

The Court of Queen’s Bench reversed the human rights commission’s decision that APEGA had discriminated against Ladislav Mihaly based on his country of origin.

The Tribunal found that APEGA had discriminated against Mr. Mihaly based upon the definition of *prima facie* discrimination, which means to “discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public, because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons [3].” The Tribunal found that APEGA was *prima facie* discriminatory based upon the requirement to write the confirmatory examinations or the FE exam, and due to the requirements to write the NPPE and complete one year of Canadian experience before being registered as a professional engineer.

The Court of Queen’s Bench initially dismissed the allegations of discrimination for requiring Mr. Mihaly to write the NPPE and to complete one year of Canadian work experience, as these are requirements of all registered engineers with APEGA, and not only foreign-trained professionals.

The tribunal claimed that Mr. Mihaly should not have to be required to write the confirmatory exams or the FE exam, but only an examination to correct his perceived academic deficiencies following an individualized self assessment of his credentials. The Tribunal also suggested that APEGA becomes proactive to discuss agreements with other institutions from other countries, instead of waiting for them to apply for a MRA.

The Court of Queen’s Bench found that these claims were also unreasonable, stating that APEGA does not assign examinations to applicants such as Mr. Mihaly based upon perceived academic deficiencies, but it assigns the exams to assess the quality of the undergraduate program undertaken by them. APEGA does not have reliable evidence of all engineering programs worldwide, and therefore must assess the competency of the graduates in other ways. Confirmatory exams were the tool used in this circumstance.

Regarding the suggestion of being proactive in seeking negotiations and agreements with other institutions, The Court of Queen’s Bench pointed out that there is no evidence to support that APEGA has the resources or the ability to do this. On the contrary, the evidence that accreditation involves complex procedures, cooperation from international institutions, and significant investments of time and resources suggests that this is

beyond the capacity of this and most professional bodies and is an unreasonable request.

In closing, while the Tribunal reasonably concluded that Mr. Mihaly established *prima facie* discrimination regarding the requirement to write the confirmatory or FE exams, APEGA presented undisputed evidence that clearly met the obligation to establish “reasonable and justifiable” cause, and therefore the Tribunal’s decision was reversed, with no need to remit the matter back to the Tribunal.

Reflection and Opinion

Do you agree with the decisions of the Alberta Human Rights Commission, the Court of Queen’s Bench, and the Alberta Court of Appeal? Why or why not?

I agree with the ruling of the Court of Queen’s Bench and Alberta Court of Appeals, however disagree with the filing by Alberta Human Rights Commission. The laws of science don’t change based on your geography, so evidently there should be a common ground on the nature of subjects taught in foreign countries when it comes to science related majors like engineering. Engineers require an understanding of few topics; thermodynamics, fluids, heat transfer and an understanding of machines and computers. The laws that govern the above topics are universal and should be a mandatory part of engineering education irrespective of where you are educated. Mr. Mihaly failed the NPPE exam. This exam is crucial as it ensures that you are well informed about the professional practice that could prevent accidents that may cause harm to life, or the environment of the nation. A ruling in favour of Mr. Mihaly would have undermined APEGA’s authority to regulate the engineering profession. This would allow migrants with questionable educational background to gain easy access to a profession like engineering. This has the potential to severely affect the quality of work and can expose companies hiring such engineers to millions of dollars in liability.

Furthermore, it is noteworthy that Mihaly vs APEGA is an outlier case; scores of migrants go through the APEGA process and get registered as Professional Engineers by passing the NPPE exam. Many don’t need a specialized exam based on their country of origin and education. It is impossible for APEGA to design a specialized test for each person based on the country of origin and education. There are about 195 countries in the world as of 2018. If a member from each country seeking the P. Engg designation requested a specialized approach to accommodate them, a common standard of evaluation would diminish over time.

Should APEGA accommodate foreign-trained engineers and geoscientists? Why or why not? If yes, how should APEGA accommodate foreign-trained engineers and geoscientists?

Yes, APEGA should continue to accommodate foreign-trained engineers and geoscientists as their system presently does. Similar to how engineering programs within Canada must request accreditation by the Canadian Engineering Accreditation

Board (CEAB), other countries with substantially equivalent accreditation processes for engineering programs may enter into Mutual Recognition Agreements (MRA). Under MRA, the CEAB undergoes an extensive process which involves the review of the curriculum, faculty and facilities. Material is prepared by the governing board of the country requesting the MRA, and it is reviewed by the CEAB. An in-person inspection is then held, which includes quality checking, quality management, and quality assurance, ensuring that every graduate of the program in question meets every requirement for accreditation. This process is similar for Canadian programs and foreign programs alike. Individuals who have completed engineering programs within countries that are under MRA with the CEAB generally do not have to take any entrance exams when applying for professional status with APEGA. Slovakia has not applied to undergo this process, and there is no MRA between Slovakia and Canada.

As is evident, APEGA currently accommodates foreign-trained engineers and geoscientists. The hurdles that do exist for some foreign-trained professionals that come from countries without MRA recognition, such as the confirmatory exams, are put in place to ensure educational proficiency. APEGA must uphold its standards of accreditation otherwise the accreditation itself loses its fundamental value.

In Mr. Mihaly's case, it was indeterminate how his educational and work background would coincide with APEGA's standards; therefore, he was required to complete three confirmatory exams or an FE exam prior to becoming licensed, none of which Mr. Mihaly completed. If he had cooperated and completed the prescribed exams, his prior educational background and work experience would have been appropriately recognized in accrediting him.

APEGA is accommodating to foreign professionals, although it should not be expected for APEGA to alter their mandate given that the entrance qualifications for foreign-trained professionals is based on evidence and not discriminatory assumptions [4].

References

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