

ENGG 513, Winter 2018

Mihaly vs. APEGA Case Study

Adam D'Andrea

Due Date: February 16/2018

Instructor: Denis Onen

INTRODUCTION

This report outlines the dispute between the Association of Professional Engineers and Geoscientists of Alberta (APEGA) and Mr. Mihaly, a foreign engineer whom obtained his M.Sc Diploma with a specialization in Technology and Fuels and Thermal Energy from the Slovak Technical University in Bratislava in 1975. He obtained a Certificate of Corrosion Engineering from the Institute of Chemical Technology (ICT) in Prague in 1981. However, after applying to APEGA and failing to meet APEGA's requirements (pass the NPPE, complete 3 confirmatory examinations and take a course or pass an equivalent examination in Engineering Economics), Mr. Mihaly filed a complaint with the Alberta Human Rights Commission based on discrimination.

The Human Rights Commission accused APEGA as being discriminatory against Mr. Mihaly due to where his education and experience came from. However, upon further increasing the level of the dispute to the Court of Queen's Bench, the court deemed APEGA's methods to be fair and just, and that the standards of Canadian engineers cannot be bent to compensate for each individual foreign engineer whom fails APEGA's competence tests (which most engineers can easily complete).

Below, the report further explores the role of the Alberta Human Rights Commission, the Court of Queen's Bench and APEGA; as well as the reasoning behind both the Tribunal and Court of Queen's Bench's decisions.

STAKEHOLDERS

APEGA (Association of Professional Engineers and Geoscientists of Alberta):

APEGA reviewed Mr. Ladislav Mihaly's experience and schooling and deemed him necessary to pass the NPPE (FE Exams), complete 3 confirmatory examinations and take a course or pass an equivalent examination in Engineering Economics. However, Mr. Mihaly repeatedly fell short of meeting the requirements of APEGA and proceeded to file a complaint with the Alberta Human Rights Commission claiming discrimination. "APEGA has the statutory responsibility for the registration of international engineers to assure itself of their competence to practice in Alberta without causing harm to the public" [4] and found it unreasonable to be expected to bend their standards so that Mr. Mihaly could be accepted as a APEGA registered Engineer because APEGA's standards are to design to make sure Alberta produces competent Engineers whom have the safety of the public in mind.

The Court of Queen's Bench:

"A Superior Trial Court for the Province of Alberta, hearing trials in civil and criminal matters and appeals from decisions of the Provincial Court" [2]. The Court of the Queen's Bench was involved in Mr. Mihaly's allegations of discrimination against APEGA to act as a non-bias judge in hearing trials in civil and criminal matters and appeals. The Court of the Queen's Bench Court

consists of a Chief of Justice of the Court, an Associate Chief Justice, and several judges. “The court may confirm, reverse or vary the order of the human rights tribunal and make any order that the tribunal make or merit the matter back to the tribunal with directions” [4].

The Alberta Human Rights Commission:

“Protects Albertans from discrimination in certain areas based on specified grounds. 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” [3]. The Commission is an independent commission created by the Government of Alberta and the Minister of Justice and Solicitor General are responsible for the Commission. The main role of the Commission is to foster equality and to reduce discrimination through public education and community initiatives. Mr. Mihaly filed a complaint with the Alberta Human Rights Commission, with regards to the Alberta Human Rights Act alleging that APEGA discriminated against him based on his place of origin when it denied him registration as a professional engineer.

Mr. Lidslav Mihaly:

The complainant against APEGA. Mr. Mihaly complained on February 6, 2014 that APEGA has discriminated against him in relation to his application to be registered as a professional engineer [1]. Mr. Mihaly obtained a M.Sc Diploma with a specialization in Technology and Fuels and Thermal Energy from the Slovak Technical University in Bratislava in 1975. He obtained a Certificate of Corrosion Engineering from the Institute of Chemical Technology (ICT) in Prague in 1981. However, after applying to APEGA and failing to meet APEGA’s requirements of him (pass the NPPE, complete 3 confirmatory examinations and take a course or pass an equivalent examination in Engineering Economics), Mr. Mihaly filed a complaint with the Alberta Human Rights Commission.

Dean David Lynch and the Canadian Engineering Accreditation Board (CEAB):

Dean David Lynch appeared on court on behalf of APEGA, he is the Dean of the Faculty of Engineering at the University of Alberta and has a statutory position on APEGA’s Board of Examiners. Lynch explains the required credentials for a country’s education system to be deemed equivalent to Canada’s and then for the applicant to no longer need to write the FE exams. Lynch states that to gain accreditation by the Canadian Engineering Accreditation Board (CEAB), a team must be sent to the institution to have their Engineering programs reviewed and accredited. This includes reviewing the university’s faculty members’ “intellectual base” as well as thousands of pages of documents about the university’s faculties and programs. Lynch also explains the purpose and use by APEGA of the Foreign Degree List (FD List), to assist regulators. The FD list is used by the Board of Examiners of APEGA when graduates from foreign institutions, which have not been rated to be CAEB substantially Equivalent Program, apply for registration. However, this may be waived if the applicant has 10 years of progressively responsible engineering experience.

U.S.A Accreditation Board for Engineering and Technology (ABET):

This accreditation board is comparable to Canada's accreditation process. "Universities in the U.S., in the same way as in Canada, request visits by ABET for accreditation purposes and students graduating from these universities would graduate with ABET Accreditation" [2]. This shows that the U.S. has a similar process of giving engineers credit for attaining their degrees from universities that are proven to be adequate. Dr. Lynch stated that Alberta's Board of Examiners also assign the FE exam to engineers from the U.S.A. to confirm their quality and the nature and content of their degrees. However, if the engineer has "8+ progressive years of responsible technical experience or a Master's degree or a Doctoral degree from the same area of their Bachelor's level degree and the degree is from a Canadian, U.S.A. or an institution which APEGA has a MRA, the FE exam is waived" [2].

Mr. Mark Tokarik and the Engineers Canada's Foreign Engineering Qualifications Committee (FEQC):

Tokarik obtained his Bachelor of Science in Engineering in 1981 and joined APEGA in 1999 as an Assistant Director of Registrations and then the Director of Registrations. In 2012, he was appointed as the Deputy Registrar for APEGA. "Tokarik was responsible for the registrations process for APEGA and belonged to the National Engineering Admissions Officials Group, a group of all of the Directors of Registration from every province" [2]. He was also part of the Engineers Canada's Foreign Engineering Qualifications Committee (FEQC), which is a committee of Engineers in Canada, responsible for maintaining the FD List and adding new institutions to the FD List.

Tokarik stated that for an individual to register as a Professional Engineer in Alberta, he must meet 6 requirements: academic qualifications, experience, good character, English language competency, NPPE and either Canadian citizenship or permanent residency in Canada. He also states that when an engineer arrives in Canada, they are free to start working in Canada to obtain 1 year of Canadian experience. However, this needs to be under the supervision and control of a licensed Professional Engineer.

BACKGROUND:

Mr. Mihaly is certified as an engineer as well as being born and educated in Czechoslovakia. Upon moving to Canada, he applied to APEGA to become a certified P.Eng. However, APEGGA requested that Mr. Mihaly write an NPPE (test) to confirm his engineering competence. Mr. Mihaly failed his first NPPE test, and as a result was asked to re-write the test on a later date. Mr. Mihaly did not attend the second examination date so was asked to re-write a third time, of which he failed again. Mr. Mihaly complained to the Human Rights Tribunal that he has been discriminated against by APEGA based on his place of origin.

The Human Rights Tribunal (the initial level) decided that Mr. Mihaly was discriminated against, because APEGA's examination standards and the experience standards used by APEGA were discriminatory. The Tribunal also believed that APEGA policies were discriminatory by assuming that Foreign Engineers education and experience were not as good as Canadians. As a result, Mr. Mihaly was awarded \$10,000 in compensation for "loss of dignity". APEGA was also ordered to reassess Mr. Mihaly's application.

The Tribunal also concluded that APEGA had not demonstrated that its' expectation that internationally educated graduates meet a single standard was necessary, however there should be an individual assessment to better assess internationally educated graduates based on their specific experience and education. APEGA was ordered to establish a committee within 3 months to explore other ways to properly assess individual qualifications of Mr. Mihaly and correct any perceived deficiencies. These methods may include using a different assessment, or creating a guidance program for Mr. Mihaly, or collaborating with a university to offer programs and courses for foreign trained engineers with academic deficiencies. APEGA was also ordered to match Mr. Mihaly with a Mentor to guide him along the process and challenges of being an engineer and integrating himself into the profession.

Neither APEGA nor Mr. Mihaly liked the Human Rights Tribunal's decision, so they appealed it to the Court of Queen's Bench. The Queen's Bench disagreed with the Tribunal's conclusion that APEGA was discriminatory against foreign engineers by believing that their educations may not be at the same level as Canadians, and therefore needed to be tested to meet Canada's standards. The Queen's Bench believed that the Tribunal did not have enough evidence that APEGA was being discriminatory. The Queen's Bench and the Tribunal came up with a list of 3 conditions that would validate Mihaly being discriminated against:

- 1.) "Has a characteristic that is protected from discrimination".
- 2.) "Experienced an adverse impact".
- 3.) "The protected characteristic was a factor in adverse impact".

APEGA was successful in defending their exam procedure, claiming that the purpose of their exams was to prove that the engineer has competence in his field. This is consistent with the law, to make sure engineers are qualified and able to do their work to protect the safety and best interest of the public. APEGA was also successful in stating that there was no evidence

found that foreign engineers with entry level competence would have any difficulty passing these exams.

If APEGA was forced to accommodate a foreign engineers' inability to pass their competence exams, they would need to change their entire standard for all engineers (foreign and Canadian) for getting their professional designation, and would reduce APEGA's ability to set proper standards for engineers. This would be defined as undue hardship, and accommodation beyond necessary reason.

The Court found that APEGA's decision to make Mr. Mihaly write exams due to his education being from a different country was not in fact discrimination because the exams were required of all applicants no matter where they were from. The court concluded that the decision of the Tribunal should be reversed, and that there was no need in the circumstances to merit the matter back to the Tribunal.

THE COURT OF QUEEN'S BENCH DECISION:

After the initial appealing to the Human Rights Tribunal, APEGA and Mr. Mihaly were both unhappy with the results and brought the issue to the Court of Queen's Bench. The Court of Queen's Bench has the power to "confirm, reverse or vary the order of the human rights tribunal and make any order that the tribunal may make under section 32, or remit the matter back to the tribunal with directions" [1].

The Queen's Bench disagreed with the Tribunal's conclusion that APEGA was discriminatory against foreign engineers by believing that their educations may not be at the same level as Canadians, and therefore needed to be tested to meet Canada's standards. The Queen's Bench believed that the Tribunal did not have enough evidence that APEGA was being discriminatory. The Queen's Bench and the Tribunal came up with a list of 3 conditions that would validate Mihaly being discriminated against:

- 1.) "Has a characteristic that is protected from discrimination". The Court and Tribunal both agreed that Mr. Mihaly was discriminated against based on place of origin. [1]
- 2.) "Experienced an adverse impact". Both the Court and Tribunal agreed that Mr. Mihaly had to write exams. [1]
- 3.) "The protected characteristic was a factor in adverse impact". The court did not agree that having to write exams was in fact due to discrimination. This is because All applicants must write this exam regardless of their place of education. Also, there was no evidence that Mr. Mihaly failed these exams due to his place of origin, and his inability to find a job was not due to his place of origin. [1]

The Court of Queen's Bench made the following conclusions:

- Evidence showed that often foreign engineers come to Canada early in the careers and therefore find the APEGA examinations difficult, however Mr. Mihaly has over 10 years of experience. Mr. Mihaly's experience however was found to be insufficient. It was found that of "1500 applications a year from internationally educated graduates, 60% are registered with no issue, 25% are assigned the FE Exam, and 15% have sufficient engineering experience for the examinations to be waived" [1]. Therefore, the exams were not discriminatory against Mr. Mihaly
- If APEGA was forced to accommodate a foreign engineers' inability to pass their competence exams (as the Tribunal originally asked), they would need to change their entire standard for all engineers (foreign and Canadian) for getting their professional designation, and would reduce APEGA's ability to set proper standards for engineers. This would be defined as undue hardship, and accommodation beyond necessary reason. APEGA has the statutory responsibility for the registration of international engineers to assure itself of their competence to practice in Alberta without causing harm to the public and therefore should not lower their standards or make exceptions for individuals who are unable to pass the standardized exams.

APEGA was successful in defending their competence exams. The FE exams "parallel the Canadian Accreditation standard" [1], and that foreign engineers must take this examination to demonstrate that their education is at par with a Canadian graduate.

As a result, the Court overruled the Tribunal's original sentence and found that APEGA's decision to make Mr. Mihaly write exams due to his education being from a different country was not in fact discrimination because the exams were required of all applicants no matter where they were from. The court concluded that the decision of the Tribunal should be reversed, and that there was no need in the circumstances to merit the matter back to the Tribunal.

RECLECTION AND OPINIONS:

Originally, I had agreed with the Tribunals' decision with regards to Mr. Mihaly being treated unfairly. However, that was before I had read that Mr. Mihaly had taken the FE exams multiple times, and had even registered but not attended once. Mr. Mihaly had also falsely stated that APEGA had sent him letters confirming that his qualifications were acceptable. My Mihaly also falsely stated that he had passed the NPPE exam on October 16, 200, however he was found to be absent on that day.

I do have sympathy for Mr. Mihaly, because it would be heart breaking to come to Canada to find that all your education and experience is found to be inadequate. However, the FE exams are standardized and seem to be easily passed by competent engineers, and APEGA is responsible for holding professional engineers, geologists and geophysicists to high standards to keep the public's best interest and safety a top priority. I myself have worked hard to achieve a Geology and Engineering degree from Canada at accredited universities, after achieving my initial geology degree, I had the options of transferring my courses to America to complete my engineering degree from an American University within 1-2 years, however I opted to stay within Canada and take my Engineering degree from an accredited and well-known university. Even though it has taken me over 4 years to complete the Engineering degree (1 year of internship), rather than 1-2 years in America, I know that not all degrees are equal, and I would rather be confident in my engineering knowledge than finish an engineering degree from a lesser recognized university outside of Canada. For someone to come into Canada having taken a "short cut" to a similar degree, and to be able to apply for the same jobs that a Canadian student who had worked hard to achieve the high standards of an accredited Universities seems unfair and would overall lower the quality of Engineers seen within the workplace.

Furthermore, if APEGA were made to lower its standards, or to force itself to find ways of "passing" foreign engineers would lower the overall reputation of Canadian Engineers and Geoscientists. During my engineering degree, I had to retake one course because my grade failed to meet the standards of the University, and it was a prerequisite for a next level course. I did not expect the university to make any exceptions for me, or to find a way bend the rules to allow me to move on with my degree, because that would ruin the obligation that Alberta put on the University of Calgary to produce competent Engineers. The same goes for foreign Engineers, the standard cannot be bent to allow all individuals to pass.

The Tribunal mentioned that you cannot expect a foreign trained engineer to run "2.5km in 11minutes" when they perhaps have other skills that would make them a good engineer. This is a good point; however, Engineering is an intellectual job, everyone should be able to meet the same level of problem solving and critical thinking to be classified as an APEGA certified engineer. In the firefighter case, the female firefighter was a great fire fighter, and underwent an individual assessment to determine her ability to work the job, and she passed. The same is done with APEGA, where APEGA individually assess applicants to determine whether examinations may be waived. Examinations may be waived for applicants who have:

1. Completed a graduate degree at a university in Canada or an MRA country [1]
2. Or, Have 10+ year of progressively responsible engineering experience [1]

I do feel sorry for Mr. Mihaly, however there are many universities within Canada where he could take a couple courses to refresh/enhance his knowledge so he may pass the APEGA FE exams on another attempt.

References

[1] Association of Professional Engineers and Geoscientists of Alberta v Mihaly, 2016. Retrieved from: <http://www.apega.ca/assets/PDFs/mihaly-decision.pdf>

[2] Alberta Courts. Court of Queen's Bench of Alberta Website. Retrieved February 6, 2018 from: <https://albertacourts.ca/qb/home>

[3] Alberta Human Rights Commission Website. Retrieved February 6, 2018 from: <https://www.albertahumanrights.ab.ca/about/Pages/about.aspx>

[4] Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, 2014. Retrieved from: <https://www.canlii.org/en/ab/abhrc/doc/2014/2014ahrc1/2014ahrc1.html?search>