ENGG 513

Roles & Responsibilities of the Professional Engineer in Society

Case Study Report

The Court of Queen’s Bench of Alberta judgement involving APEGA, the Human Rights Commission and Mr. Ladislav Mihaly

Written by:

Yann Schoenenberger 30058014

Carli Brockway 10152828

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Instructor: Dr. Denis Onen

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# 1.Introduction

This report is a case study report, based on The Court of Queen’s Bench of Alberta judgement involving APEGA, the Human Rights Commission, and Mr. Ladislav Mihaly, an engineer from Czechoslovakia. The purpose of this report is to give an overview of the Mihaly case, to show what the requirements are to get a Professional Engineer, to show APEGA’s regulatory process and the legal and quasi-legal environment in which it operates.

The first part is about the different stakeholders and how they are connected to the case. Then, some background information will be summarized such as the history of this case, how it ended up at the three legal bodies, The Court of Queen’s Bench, the Alberta Court of Appeal and the Alberta Human Rights Commission and how their decisions were made. Afterwards, the Court of Queen’s Bench decision will be explained and developed in more detail.

The report will be concluded by a critical reflection and our opinion. First, we’re going to discuss whether we agree with the decisions, made of the Alberta Human Rights Commission, the Court of Queen’s Bench and the Alberta Court of Appeal. The second question will be about whether APEGA should accommodate foreign- trained engineers and geoscientists and how.

# 2. Stakeholders

## 2.1 APEGA

APEGA is the abbreviation for Association of Professional Engineers and Geoscientists of Alberta, which was established in 1920. It has a legislated mandate to regulate the practice of the professions in Alberta with special fields in Public Safety, Licensing, Outreach and Education, and Member Relations. To ensure that Alberta is at the forefront of technological innovation, every member with their technical and management expertise plays a significant role in every different area of economy.

## 2.2 The Court of Queen’s Bench

The Court of Queen’s Bench, or “the Court”, is the Superior Trial Court for Alberta. Once the Provincial Court has made a decision, the appellant can appeal to the Court. Furthermore, the Court hears trials in civil, commercial, family, and criminal matters in Judicial Centres, as well as Circuit Points in Alberta. The Court consists of a Chief Justice, an Associate Chief Justice, 74 Justices, a multitude of Supernumerary Justices and Masters in Chambers. Additionally, Legal Officers, Court Coordinators, Judicial and other Assistants work there.

Concerning Mihaly, the Court has the final decision and in Mihaly’s case, the Court ruled against Mihaly.

## 2.3 The Alberta Human Rights Commission

The Alberta Human Rights Commission constitutes a quasi-judicial human rights body. The purpose of the Commission is to reduce discrimination “through the resolution and settlement of complaints of discrimination”, and through a human rights tribunal and court hearings. It’s acting under the *Alberta Human Rights Act.*

The Alberta Human Rights Commission constitutes the first step of Mihaly’s process. More information about the decision can be found in the case summary.

## 2.4 Mr. Ladislav Mihaly

Mr. Ladislav Mihaly was born, educated, and certified in Czechoslovakia. He moved to Canada and applied to APEGA for registration as Professional Engineer in 1999. As a result of failing the National Professional Practice Exam twice, his application was dismissed. Thereupon, he filed a claim with the Alberta Human Rights Commission. He won that claim, however APEGA appealed to the Queen’s Bench.

## 2.5 Engineers Registered with APEGA

Every Engineer who’s registered with APEGA, had to prove certain requirements. A education, four years of work experience, knowledge of local practices, language, a good character, and the knowledge of professional practice and ethics. Having obtained these conditions, they have the qualification for being a Professional Engineer.

They are all affected by the process of Mr. Mihaly, because he can’t prove the basic requirements that they had to. As a result of being an immigrant from Czechoslovakia, there are some extra conditions, but in general, defying against the “general rules” of professional licensing, could lead to some serious dissatisfaction of the registered engineers, and APEGA would forfeit credibility.

## 2.6 Immigrants

Immigrants, who want to be registered as a Professional Engineer, constitute another stakeholder in the process of Mr. Mihaly. They are affected directly by the result of his process, because they will be treated the same way. Normally, the Association's Board of Examiners addresses all documents. Every internationally educated engineer has to write three to four confirmatory examinations, except senior applicants with more than 10 years of experience. After having passed these technical examinations, international engineers are allowed to write the Professional Practice Examination, which is an exam on ethics, professional practice, engineering law and professional liability. When successful having passed this examination and an additional character review, they get their licence awarded.

## 2.7 The Public

A licensed engineer is legally responsible for the safety of their designs. If the engineer isn’t properly qualified to assess the dangers, the public could be at risk as a result. When an engineer is allowed to practice without going through the same qualification process, there’s a chance that there will be gaps in their knowledge. This could result in a deadly mistake. Due to this the public will be affected by the standards that APEGA sets and who they do and do not allow to practice.

# 3. Background - Case summary

The case summary is about Mr. Mihaly, a Czechoslovakia citizen, who moved to Canada and wanted to get registered as a Professional Engineer. He failed the National Professional Practice Exam twice, so APEGA refused his application. That’s the reason why he filed a claim, which ended up at Alberta Human Rights Commission, the Court of Queen’s Bench, and the Alberta Court of Appeal.

In 1975, Mr. Ladislav Mihaly, born and educated in Czechoslovakia, obtained his Master of Science Diploma. He moved to Canada and applied to APEGA for registration as a Professional Engineer in 1999. In a letter from APEGA, Mihaly was asked to write the National Professional Practice Exam on January 17, 2000, which he failed in his first attempt. He also had to pass an examination in Engineering Economics by May 2001. He applied for the National Professional Practice Exam a second time, but he didn’t attempt it. In consequence, APEGA withdrew his application. He applied a third time for the exam, together with a reactivation of his application. APEGA allowed him to re-write, but he failed a second time on July 15, 2002. Again, he asked to reactivate his application and to write the Exam, which he failed again on July 15, 2002. His application was reactivated together with the condition, that he had to write three confirmatory examinations by May 2003 together with the Engineering Economics exam by November 2003. Another attempt for the National Professional Practice Exam on January 20, 2003, and he failed. As a result of not having completed the examinations required, APEGA again withdrew his file on August 1, 2003. On October 18, 2006, his application was reactivated for a third time, after he requested for it to be on October 3, 2006. On November 16, 2006, Mihaly provided an updated resume and a list of updated references, which was requested by APEGA. Again, on August 10, 2007, his application was reconsidered by the Board of Examiners. Also, they told him to complete three confirmatory examinations, additional to a examination in Engineering Economics or the Fundamentals of Engineering Examination (FE- Exam). He did not have the one year of Canadian professional engineering experience, so he was required to do a one- year D level Canadian engineering experience. The previous position he worked in was not comparable to a D level. As before, he refused to provide the requirements as requested by APEGA. Based on the *Alberta Human Rights Act*, he filed a complaint with the Alberta Human Rights Commission.In this complaint, he maintained, that “APEGA discriminated against him based on his place of origin when it denied him registration as a professional engineer”, with success.

Because of succeeding in establishing the *Examination Standard* and the *Experience Standard,* which is used by APEGA to assess the educational requirements, the Tribunal found, that this constitutes “discrimination which cannot be justified”. As consequence, Mr. Mihaly was awarded $10,000 in general damages. Furthermore, APEGA had to reconsider Mihaly’s application and provide him a mentor, which should integrate him to the engineering profession as well as giving him language training resources.

In 2015, the appeal by APEGA was heard. The cross-appeal by Mihaly seeked to increase damages to millions. The decision of the Court of Queen’s Bench, which over-turned the Human Rights Tribunal decision, was made in 2016. The Court of Queen’s Bench found that the decision of the Human Rights Tribunal was “rife with logical errors”, “finding of fact unsupported by the evidence”, “failures to take into account relevant considerations” and lots of other errors. These findings also caused the cross-appeal by Mihaly to be dismissed.

One year later, in 2016, after Mihaly failed to take the required steps to advance his appeal to the Court of Appeal, the appeal was struck. Another try to restore it, was crushed in 2017. After the decision of the Court of Appeal, APEGA was entitled to have some finalty concerning the procedures for evaluating foreign credentials.

# 4. The Court of Queen’s Bench Decision

The Court of Queen’s Bench was tasked with considering an appeal to the Alberta Human Rights Tribunal’s decision by APEGA, as well as a cross appeal by Ladislav Mihaly. Although the hearing was initially set for the 12th of December, 2014, the court adjourned the meeting after requesting that the Tribunal address some key points for the case. The Court requested for the Tribunal to speak to “the impact of this Court’s decision in Grover v Alberta (Human Rights Commission),” “the test for prima facie discrimination,” as well as “the test for the defence of a bona fide occupational requirement.” These requests helped provide the Queen’s Court with more information to properly assess the issues raised by the Appellant. The Queen’s Court would have to assess four categories: procedural fairness, jurisdiction, prima facie discrimination, and justification. Procedural fairness was is questions, as the Appellant had submitted that “the Tribunal breach[ed] the rules of procedural fairness when he decided issues that were not raised by or with the parties.” The jurisdiction was brought into question, because it was unclear if the Tribunal had jurisdiction to “determine whether discrimination based on the place a person receives their education constitutes discrimination based on place of origin.” Prima facie discrimination was considered to assess if the Tribunal had selected and applied the legal test correctly. Finally, the Queen’s Bench had to consider if the “Tribunal’s decision that APEGA’s registration requirements were unjustified [was] unreasonable.”

An important part of the legal process is proving legal precedent. If either Mr. Mihaly or APEGA could present a previous case similar to their appeals, the court would have to use this to guide their decision. APEGA presented the case of Grover v Alberta Human Rights Act in their attempt to prove legal precedent. In this case the court had found that discrimination due to the “place of origin of academic qualifications” was not protected under the Alberta Human Rights Act (AHRA). This was due the Judge finding it unreasonable to extend the definition of place of origin to the place where a person achieved their degree. However, the Queen’s Court found that “[t]he context and the facts of Grover were different from what we are considering in this case.” Unlike in the case of Grover v AHRA the Judge stated that “there is a clear linkage between Mr. Mihaly’s place of origin, the origin of Mr. Mihaly’s foreign credentials and whether he is granted admission to [APEGA].”

As a result of the information provided, the Queen’s Bench concluded that the Appellant did not establish “a breach of the rules of procedural fairness,” or that “the Tribunal lacked jurisdiction.” However, they did find the other two challenges by the Appellant to be true. While the Queen’s Bench considered a variety of other cases, the most important was Moore v British Columbia. From this case came the “Moore test,” and it was concluded that the “Tribunal failed to apply the Moore test in relation to the NPPE and Canadian experience requirements.” As a result, the Tribunal finding that there was prima facie discrimination was found to be unreasonable. Additionally the Judge found that APEGA did in fact justify its testing requirements under s 11 of the AHRA. These findings resulted in the Court of Queen’s Bench overturning the Tribunal’s decision, which also resulted in the rejection of Mr. Mihaly’s cross appeal.

# 5. Reflection and Opinion

We do not agree with the decision made by the Alberta Human Rights Commission. The Tribunal did not appear to consider all the groups that this decision could affect. While it is important to uphold Canada’s value of fairness, the Tribunal’s decision puts the general public at risk. Canadian engineers are required to go through four years of schooling, and, even then, they are only considered Engineers in Training. This is a result of engineers being responsible on signing off on designs that, if they fail, could be incredibly dangerous. Without the guarantee of a thorough education and a knowledgeable mentor, APEGA is unable to assess the competence of the engineer. However, the Tribunal is correct that “many immigrants from Eastern Europe, Africa and Asia experience disadvantage and discrimination in the workforce because of language, culture and racial prejudice.” Despite this issue being very important to solve, it does not have a bearing on this specific case. It seems as though the Tribunal was trying to correct this injustice through the Mihaly v APEGA case rather than following the correct legal process.

We do agree with the decision of the Court of Queen’s Bench as well as the Alberta Court of Appeal. They appeared to have a more thorough examination of the laws that were relevant to the case. As mentioned earlier, they reviewed four aspects of the case; procedural fairness, jurisdiction, prima facie discrimination, and justification. We do believe they were correct in finding that the Tribunal did have jurisdiction and that they did not break procedural fairness. However, this was not the most important finding. To me, the key finding is that the tribunal vastly overstated what support APEGA is capable and legally responsible for providing engineers. According to section s11 of the AHRA, if the violation of the law is “reasonable and justifiable in the circumstances,” it is “deemed not to have occured.” It is extremely justifiable for APEGA to impose regulations and tests on a potential engineer when they cannot guarantee the extent of their education. This is essential for keeping the general public safe from failures in engineering design.

We believe that, in general, APEGA’s system is the correct way to accommodate foreign trained engineers. It is not possible to make the the process ideal for every engineer, however it is important to ensure that no qualified engineer is barred from working. Having accredited universities is essential to be able to identify which engineers are qualified to work in Canada without additional tests or requirements. I think this is where the biggest effort from APEGA should be focused. It is the easiest process, for both APEGA and foreign born engineers, if the engineers are fully qualified when they graduate instead of going through extra testing. Extra testing prevents foreign born graduates from entering the workforce as soon as possible, which is detrimental to both the engineers and APEGA. We also think APEGA should still work with the universities that they do not consider to have an equivalent degree. If they had a deeper understanding of the program, they can identify the specific parts of the degree that are lacking according to the Canadian engineering standard. This means that the testing and requirements could be more specialized to each engineer who’s applying to become qualified in Canada. We believe that these two measures would have the biggest impact on making the process easier for foreign born engineers.

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