ENGG 513

The Role and Responsibilities of the Professional Engineer in Society

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A Case Study into the 2016 judgement by the Court of Queen’s Bench in the case of APEGA v. Ladislav Mihaly and the AHRC

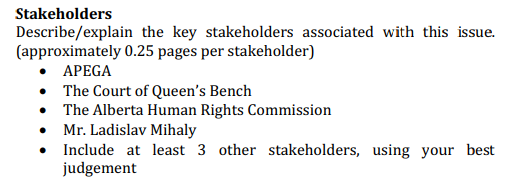
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**Introduction:**

The purpose of this case study report is to examine the events surrounding Mihaly’s application to Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGA) to become registered as a professional engineer, the resulting court proceedings of Mihaly v. APEGA 1, and the impacts the case had on all stakeholders. The court proceedings first began in 2014 with the Alberta Human Rights Commission (AHRC) decision that Mihaly had been discriminated against by APEGA while applying for registration as a Professional Engineer between 1999 and 2008. The proceedings ultimately concluded in 2016 with an appeal of the decision by APEGA in the Court of Queen’s Bench2. The successful appeal ultimately saw the reversal of AHRC’s decision and Mihaly was not granted APEGA registration. This court case sparks discussion on a variety of topics, such as what is required for registration as a Professional Engineer in Alberta, how associations should accommodate foreign-trained engineers and geoscientists, and on how APEGA and engineers are involved in the legal and quasi-legal environment. This report will cover both the 2014 and the 2016 cases involving APEGA v. Mihaly, their stakeholders, a reflection on the decisions by both the AHRC and the Court of Queen’s Bench, and my personal thoughts on the matter.

**Stakeholders:**



*APEGA*

One of the two primary stakeholders associated with the issue, APEGA is the regulatory body for engineering in Alberta that “regulates the practices of engineering and geoscience in Alberta on behalf of the Government of Alberta through the Engineering and Geoscience Professions Act” 3, as stated on their official website. As a regulatory body, APEGA was the main point of discussion surrounding both court cases, as it was their allegedly discriminatory Examination Standards and Experience Standards that sparked Mihaly to file the 2014 complaint against them. APEGA would face great scrutiny if their standards were found to be discriminatory against foreign immigrants, which played a big factor in their determination to appeal the decision by the AHRC.

*Mr. Ladislav Mihaly*

The second of the two primary stakeholders associated with the issue, Ladislav Mihaly was an immigrant to Canada from the former Czechoslovakia who, after moving to Alberta, attempted to register as a professional engineer with APEGA. Having been previously educated in Bratislava on the Technology of Fuels and Thermal Energy, and having receiving his MSc Diploma from the Slovak Technical University, Mihaly believed himself qualified to become a registered professional engineer within Alberta. However, after writing and failing the National Professional Practice Exam (NPPE) 3 times, he chose to file a discrimination complaint against APEGA with the AHRC. While he had a great deal to gain if he won the case, such as possibly being registered as a professional engineer with compensation for lost wages, Mihaly also faced great scrutiny and high court costs if he lost the case, making him a primary stakeholder in this issue.

*The Alberta Human Rights Commission*

One of the secondary stakeholders related to this issue, the AHRC is an independent commission created by the Government of Alberta, developed to carry out the functions of the Alberta Human Rights Act through the resolution and settlement of complaints of discrimination by way of human rights tribunal and court hearings4. The AHRC became a stakeholder in this issue when they agreed to settle Mihaly’s alleged discrimination by APEGA. Mihaly claimed that when APEGA required him to write the NPPE and 3 complimentary exams after deeming his foreign education to have deficiencies, he had been discriminated against due to his country of origin as APEGA failed to recognize his educational standards. The stakes for the AHRC specifically were relatively low if they deemed Mihaly was not discriminated against, as this would net minimal public outcry. However, the ramifications would be higher if AHRC deemed Mihaly had been discriminated against, as APEGA would then be legally required to pay the settlement and possibly revise the way they dealt with foreign education. Along with this, if APEGA were to then successfully appeal the decision in a higher court, it may bring scrutiny towards the AHRC for being “too sensitive towards foreigners” and for “allowing unskilled foreign workers into high risk professions”.

*The Court of Queen’s Bench*

The other secondary stakeholder connected to the issue, the Court of Queen’s Bench of Alberta (CQB) is established by the Court of Queen’s Bench Act and conducts criminal matters, civil proceedings, and the judicial review of government and tribunal action in Alberta5. The CQB became a stake holder in the issue when APEGA requested an appeal of the AHRC’s 2014 decision supporting Mihaly’s discrimination complaint. The CQB’s responsibility is to fairly review any tribunal action taken in Alberta, which the AHRC’s decision was classified under. As a reigning judicial figure, the CQB held a moderate stake in the case, as their job was to fairly review the case and pass judgement, therefore deciding the fate of Mihaly V. APEGA. Reversing the decision would bring scrutiny towards the AHRC, while declining the appeal would result in financial and possible structural ramifications for APEGA, as well as possibly lessening the public’s confidence in APEGA as a governing body.

*Future foreigners registering to become professional engineers*

Along with the major stake holders in the case, depending on the outcome of the proceedings, other stake holders could be introduced into the issue. One of the main issues surrounding the case involved how APEGA assesses the education of foreign applicants. If the AHRC found APEGA’s testing standards to be discriminatory, and if APEGA had subsequently lost their appeal to the CQB, then it may have a major effect on future foreigners registering to become professional engineers. Foreign engineers would become stake holders in the issue, as the revisal of APEGA’s regulations on foreigner applications could allow for previously rejected individuals to become eligible for registration. To assure equality in the process it is also possible that regulatory changes could make it harder for any applicant, foreign or local, to become registered.

*Government of Alberta*

An additional stakeholder would most likely be the Government of Alberta, if the issue were to cause a public outcry. APEGA, as previously stated, regulates the practices of engineering and geoscience in Alberta on behalf of the Government of Alberta through the Engineering and Geoscience Professions Act. If APEGA was deemed not suitable as a regulatory body, the Government of Alberta would have to step in to either enforce revisions on APEGA making it more suitable, or to enforce the act themselves until another body could be formed that could properly regulate the engineering and geoscience professions.

*APEGA Members*

A final stake holder in the issue would be the registered professional engineers and geoscientists of APEGA themselves. If the association were to allow foreign educated applicants without standardized testing, the members of APEGA could stand to lose credibility with companies and employers, which would be a detriment for both sides. On the other hand, if APEGA were to revise their rules to more strictly test all incoming members, it may make the association more exclusive, raising the credibility of members and creating more demand for APEGA members. Either decision would change the stakes for the members of APEGA.

**Background:**

Mr. Ladislav Mihaly was born in the former Czechoslovakia, where he received his education from two different institutions. He obtained a MSc Diploma from the Slovak Technical University in Bratislava in 1975, where he specialized in Technology of Fuels and Thermal Energy, and a Certificate in Corrosion Engineering from the Institute of Chemical Technology in Prague in 1981. After receiving his education, Mihaly decided to pursue a future in Alberta, and after immigrating to Canada he applied to APEGA in May of 1999 to register as a Professional Engineer.

APEGA’s Board of Examiners reviewed his application as they do with all applicants, and in February of 2000, APEGA sent a letter that advised Mihaly that to become registered, he must pass the mandatory NPPE exam that all applicants are required to write. In addition to the NPPE, and to confirm the standard of his education, Mihaly was required to write three confirmatory examinations and take a course in engineering economics by May 2001. Mihaly proceeded to write the NPPE, and unfortunately failed the exam. APEGA withdrew his application by May of 2001 since he had failed to pass the required exams in the given time period. Mihaly reactivated his application in 2002, wrote the NPPE again, and failed a second time. After rewriting and failing the NPPE for a third time in 2003, he applied again in 2006. In the interim APEGA informed him the requirements had changed, and he was now required to obtain one-year of acceptable D level Canadian engineering experience. It was at this point that Mihaly decided to proceed in a different direction regarding his registration to be a professional engineer with APEGA.

On August 5, 2008, Mr. Mihaly filed a complaint with the AHRC against APEGA, claiming that APEGA had discriminated again him based on his country of origin when APEGA denied him registration as a professional engineer and required him to write 3 confirmatory exams along with the NPPE. Mihaly claimed that his education from Czechoslovakia was comparable to that of a Master’s Degree in Alberta, and that the confirmatory exams should not have been required. However APEGA stated that, according to the Foreign Degree List as set out by the Canadian Council of Professional Engineers, his education was more comparable to one that was less than a bachelor’s degree. After extensive deliberation, the AHRC decided in 2014 that Mr. Mihaly had in fact been discriminated against by APEGA, and that APEGA should have completed more extensive research into his education instead of subjecting him to lesser treatment. The AHRC awarded Mr. Mihaly $10,000 in general damages and required APEGA to reconsider Mr. Mihaly’s application. The AHRC also required that APEGA appoint a committee to assess and give preferential treatment to Mr. Mihaly to correct any perceived academic deficiencies, along with possibly exempting him from some of the required examinations.

APEGA believed that the decision by the AHRC in 2014 against them was unjust and not under the jurisdiction of the AHRC, and 9 months late in November of 2014, APEGA filed an appeal brief to the Queen’s Bench of Alberta. The appeal hearing took place on July 23rd and 24th, 2015, and in January of 2016, the Queen’s Bench decided that the decision of the AHRC tribunal should be reversed, and Mr. Mihaly’s cross-appeal for compensation for wage loss be dismissed. Following the standards in Alberta, the appeal was sent to the Court of Appeal, to review the record to determine whether errors of law or fact were made in the Queen’s Bench decision. For the context of this case study, it was at this time that the events of APEGA v. Mihaly concluded. No further decisions were made by any council, Mihaly was not registered as a professional engineer and APEGA was not required to make changes to its regulations or have to pay damages to Mihaly.

**The Court of Queen’s Bench Decision:**

The largest turning point of the APEGA v. Mihaly case, was most likely the 2016 CQB appeal of the decision by the AHRC. After the 2014 decision by the tribunal that found APEGA’s treatment of Mihaly to be discriminatory, it came as no surprise that APEGA then filed an appeal of the decision to a higher court. In the file for appeal, APEGA raised 4 main issues that the QBC had to consider6; did the Tribunal breach the rules of procedural fairness, did the Tribunal make an error when he held that he had jurisdiction to determine if discrimination had occurred, did the Tribunal rely on the correct legal test to determine if prima face discrimination had occurred, and was the Tribunal’s decision that APEGA’s registration requirements were unjustified unreasonable?

On the first topic of procedural fairness, APEGA stated that the issue with the AHRC’s decision lay in the word “or” in the AHRC’s statement “an applicant may be assigned confirmatory examinations *or* examinations for the purpose of correcting a perceived deficiency”6, and that it was an incorrect interpretation of the EGPR as the AHRC’s decision ignored the “or”. The CQB determined that there was not a breach of the rules of procedural fairness in the 2014 case, comparing it to a 2008 case of Amacon V. Dutt7 in support of their argument. On the second topic of jurisdiction, APEGA claimed that the Tribunal had no jurisdiction over Mr. Mihaly’s complaint because the Alberta Human Rights Act (AHRA) does not protect against discrimination based upon the “place of origin of academic qualification”8 as seen in a previous case. The CQB determined in the end, that that the tribunal did in fact have jurisdiction over the matter, and that was not a cause for reversal.

While the first two topics were met with declination, it was the following two issues in which the CQB took interest. When the CQB investigated whether APEGA displayed prima facie discrimination, or (first impression) discrimination, the CQB discovered that the Tribunal findings were not supported by evidence. The CQB stated that they were unable to defer to the Tribunal’s determination as it was based in part on an unreasonable finding, as all applicants are required to write the NPPE, and as such it provides no discrimination that they made Mihaly take the exam. Along with this, the final section of justification was also found to be flawed, as APEGA had not failed to justify the requirements imposed on Mihaly in writing the confirmatory exams.

This was the turning point for the Court of Queen’s Bench’s decision, as they had discovered that the AHRC had unfairly judged APEGA in their 2014 decision regarding Mihaly v. APEGA. From here, the CQB concluded that the decision of the Tribunal should be reversed, and there be no need to remit the matter back to the AHRC. The decision was then relayed to the Court of Appeal for final approval, which would see the case finalized, and APEGA freed of the discrimination allegations they faced.

**Reflection and Opinion: (1-2 Pages)**

Throughout the 8 year period between Mihaly filing his complaint with the AHRC, to the Court of Queen’s Bench appealing the Tribunal’s decision, there is a lot to reflect upon. Starting from the beginning with the AHRC, the job of the Alberta Human Rights Commission is to protect the rights of all people within Canada, and I personally believe that the responsibility put onto the AHRC to ensure that all people are treated equally is enormous. It can be extremely difficult to determine what defines an act of discrimination, as opposed to an act of general restriction with such complex cases being analyzed, along with other such tough decisions. The AHRC reviewed the case that Mihaly had submitted to them, and from the amount of evidence pointing to APEGA having been lax in their investigation into the source of Mihaly’s education, I believe it to be understandable how the committee may have leaned towards believing there was some discrimination towards Mihaly’s education. I believe the AHRC did attempt to remain unbiased in the situation, recognising that the Examination Standard and the Experience Standard were adopted by APEGGA in good faith, but the Foreign Degree list which APEGGA used to assess the suitability of Engineers immigrating to Canada was mainly an open source review of information. I believe that their final decision that APEGA had been discriminatory towards Mihaly’s country of origin may have too focused on the debate that it was a discrimination issue, rather than it seeming like it was mainly an issue of APEGA’s lack of proper assessment of foreign institutions and therefore I do disagree with the assessment. The AHRC awarding $10,000 and declining to award lost wages as a punishment if it were the case however, I do agree with. The award makes up for the cost of all tests Mihaly took towards wanting to become registered as a Professional Engineer, along with any other court costs, and saw to that he be given better treatment by APEGA when applying, but also allowed APEGA to still issue testing they saw required to determine his competency. Overall, I believe that the AHRC decision may have been suggesting more heinous intentions from APEGA, but saw an acceptable resolution with them asserting APEGA to only pay $10,000 in damages, and give Mihaly more preferential treatment.

As with most court cases, there is always an opportunity to appeal to a higher court if the decision was deemed unfair by one party. I believe that it was reasonable that APEGA wanted to appeal the decision, as the association wanted to maintain an upstanding reputation within Alberta. When given to the Court of Queen’s Bench, the sides of the case flipped, as now APEGA was the applicant instead of Mihaly, and the AHRC and Mihaly became the respondents. However, the stakes were now different, as Mihaly cross-appealed to request an award of $1,000,000.00 and to be registered as a professional engineer, or $2,000,000.00 if not to be registered. The CQB seemed in my opinion to take a different approach to the subject from the AHRC’s decision, as the CQB was more focused on the legal aspects and contradictions in the nuances of the AHRC’s decision, then on providing an overall ruling in the matter, which admittedly may just be how the CQB functions in respect to the Tribunal. When considering the case, I believe the CQB to have been fair to both sides of the argument, and I agree with their findings. On the side of Mihaly and the AHR, they stated that they believed the AHRC were within jurisdiction to admit decision in the matter, and that there was procedural fairness in how the tribunal took place6. On the side of APEGA, the CQB stating that APEGA had not committed prima facie discrimination, nor had APEGA failed to justify why the requirements to register as a professional engineer were in place.

From an outsider to the legal and judicial scene, the case at the start seemed rather simple in my opinion. It seemed from my perspective, that Mihaly had received an education that was not up to Albertan standards, which was the cause for him failing the NPPE 3 times in a row. I believe that he then decided it too difficult to pass, so he took legal action as an alternative to having to pass the NPPE in order to be registered as a professional engineer, or at least to receive financial compensation for his troubles. What the Court of Queen’s Bench decision showed through their proceedings, was that while my opinion may have been rash and slightly bigoted, the case did in fact boil down to APEGA having a standard of entry as shown by the NPPE, and Mihaly failing to pass the test standard to all engineers, was not a matter of discrimination on the part of APEGA. I believe that the final decision on the CQB’s part that the decision of the AHRC be reversed was fair for all parties involved, and thus I also agree with the decision of the Albert Court of Appeal to uphold that decision.

Moving forward from this case, an interesting point is brought up about APEGA on if APEGA should further accommodate foreign-trained engineers and geoscientists. Now, as stated by both the AHRC and CQB, I do believe that the Foreign Degree List that APEGA uses to determine the quality of foreign education may be not up to a professional standard, so in terms of that method of determination, I believe that APEGA should further accommodate those individuals by revising their standard for judging the quality of education of other institutions. However, in terms of accommodating foreign-trained engineers and geoscientists past what could constitute favouritism, that I do not agree with. All applicants should have fair and equal access towards registering to become professional engineers and geoscientists, and APEGA should always make progress towards that main goal.

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