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

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Mihaly Study Case Report

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**Introduction**

Being able to prove your capability to perform your job, is not a form of discrimination. I will be discussing the case of Mr. Mihaly vs. The Association of Professional Engineers and Geoscientist of Alberta. Mr. Mihaly was denied registration to be a Professional Engineer and states he had been discriminated against by the Association of Professional Engineer and Geoscientist of Alberta. I will be discussing the two court cases that have taken place with this topic. Starting with the Human Rights Commission’s, followed by the Court of Queens decision, and finish with my own thoughts on the processes.

**Stakeholders**

The Association of Professional Engineers and Geoscientist of Alberta (APEGA) has the authority to decide who is and who is not a professional engineer in Alberta. They are a key stakeholder in this case, because they are the ones who are accused of discriminating Mr. Mihaly. The interest of APEGA is to defend the Act and resolve the problem at hand. APEGA’s job is to protect the public, and they do so by having a very high standard of which they allow engineers to practice their craft in Alberta.

The Alberta Human Rights Commission deal with the first case of APEGA vs. Mr. Mihaly in 2014. There interest is to find a compromise to the conflict between the two parties regarding discrimination against Mr. Mihaly. They have the overall ruling on the case, as well as provide a remedy plan for the given side.

The Court of Queen’s Bench or just the Court of Alberta, deals with criminal matters and is the deciding factor in the second case between APEGA and Mr. Mihaly in 2016. The interest of the court is to provide a solution for the appeal of the original case between APEGA and Mr. Mihaly. The court has the choice to reverse or not reverse the decision of the Human Rights Commission.

Mr. Ladislav Mihaly was born and educated in former Czechoslovakia. In 1975 he received a M. Sc. Diploma from the Slovak Technical University in Bratislava. In 1981 he received a Certificate for Corrosion Engineering from the Institute of Chemical Technology in Prague. After immigrating to Canada in May 1999, he applied to APEGA to become a professional engineer in Calgary. Mr. Mihaly is a key stakeholder because he is representing himself in this case. Mr. Mihaly believes he has been discriminated by APEGA and looks to be given compensation for the difficulty’s as well as to finally become a Professional Engineer in Alberta.

Dean Lynch provided testimony on international agreements and the evaluation of credentials of engineers by APEGA. He is currently the dean of the Faculty of Engineering at the University of Alberta. Dr. Lynch also evaluates international cases of engineers around the world looking to join APEGA as a professional Engineer in Alberta. The position for which he works is directly related to the subject at hand; thus, makes him a key stakeholder. His opinions on the matter at hand are valid because this is his subject of expertise.

Dr. Gary Faulkner is another witness for APEGA. He was once the Chair of the Department of Mechanical Engineering at the University of Alberta and has been apart of the APEGA Board of Examiners since 1988. Dr. Faulkner represents the Board of Examiners who review the qualifications of the engineers. He is a key stakeholder in this situation because he has the expertise to review Mr. Mihaly’s work experience and decides if it is up to the standard.

Mr. Mark Tokarik is the final witness for APEGA. He has a Bachelor of Science in Engineering and has also obtained a Bachelor of Law. He joined APEGA in 1999 and is currently the Director of Registration. Mr. Tokarik is responsible for the registration process which makes him a key stakeholder in this case. Mr. Tokarik provides key information about the entire registration process while focusing on the Foreign List and examinations.

**Background**

Mr. Mihaly a 25-year experienced lead engineering in Czechoslovakia, decided to immigrate with his family to Calgary with the assumption that he could continue the same type of work in Calgary, Alberta. In May of 1999 APEGA acknowledge Mr. Mihaly’s application, and requested to see his transcripts. He was told he must write the National Professional Practice Exam (NPPE) as part of the registration process to become a professional Engineer. After reviewing his transcripts and discovering his education is known by APEGA to be a foreign certification, they informed Mr. Mihaly that he needed to take additional examinations to prove his credentials. Between the years 2000-2003 Mr. Mihaly failed the NPPE three times and did not attempt any of the additional examinations. In 2006 Mr. Mihaly once again reactivated his file and was required once again to write the same examinations. He did not attempt any of these examinations. Mr. Mihaly filed a complaint with the Alberta Human Rights Commission on August 2008 stating that he had been discriminated against by APEGA.

Mr. Tokarik explained that “…individual who wants to be registered as a Professional Engineer in Alberta must meet six requirements which are: academic qualifications, experience, good character, English language competency, NPPE and either Canadian citizenship or permanent residency in Canada” [1]. Starting with the first requirement, Dr. Lynch clarified that Mr. Mihaly’s education was from an institution that is on the Foreign Degree list. Since this is the case, Mr. Mihaly was advised that he needed to complete three confirmatory exams and an exam in Engineering Economics. Mr. Mihaly failed to participate in any of these exams at any point, therefore he was unable to prove his academic qualification requirement. Mr. Tokarik when speaking about Mr. Mihaly’s work experience; “Mr. Mihaly’s work was not at a D-level i.e. work expected from a Professional Engineer but it was at a C-level which would be work at a technician level” [1]. To complete this requirement, one must have four years of experience at a D-level as well as one of those year have been completed in Canada. In Mr. Mihaly’s case, he has had no engineering experience in Canada as well as his experience in Europe was not up to standard level. Mr. Mihaly is unable therefore unable to fulfill this requirement. I am unable to make any judgement on Mr. Mihaly’s character, but for the matter at hand it can be said that his character is not questioned at this time. Also, it can be said that Mr. Mihaly’s English language competency is not being questioned. Since he is able to testify for his cause, it is fair to assume that again this is not one of the issues on hand when it comes to fulfilling the requirements. As previously mention Mr. Mihaly was not able to pass the NPPE exam, therefore it is obvious that he does not meet the requirement of passing the exam. Mr. Mihaly has obtained his Canadian citizenship therefore he has completed the last requirement. It can be said that Mr. Mihaly has fulfilled at most three of the six requirements. The problem at hand is that he is needed to complete all six to be registered as a Professional Engineer. The final decision of the Tribunal was that the Examination Standard and the Experience Standard used by APEGA constitutes as discrimination. The reason the Tribunal made this decision was because they did not believe APEGA attempt to treat Mr. Mihaly as an individual. The court believes that more could have been done to further investigation his education, as well as to explore other options to prove his credentials. Both parties appealed the decision of court which leads us to the Court of Queen’s Bench Decision.

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

APEGA believed the decision of the Tribunal was unjust for they believe their process for registering applicants to become Professional engineers is not discriminating against an individual. Mr. Mihaly is appealing the decision, because he believes he should be awarded damages for loss of income in the form of one million dollars with registration into APEGA, or two million dollars without. The issues on the appeal include: Procedural fairness, Jurisdiction, Prima face discrimination, and Justification.

The question on hand is; are the requirements made by APEGA justified? The main requirement that causes the most problems for Mr. Mihaly was the examinations. APEGA fought that since Mr. Mihaly never in fact wrote the confirmatory examinations there was no reason for APEGA to take different approaches on how to prove Mr. Mihaly’s credentials. The decision made by the Court of Queen’s Bench was that there was no established breach of rules of procedural fairness.

APEGA did not argue that the Tribunal lacked jurisdiction, so there is no matter to appeal for this topic.

There was no indication that Prima Face discrimination had an impact on the process of Mr. Mihaly finding employment. Mr. Mihaly stated that he found it very difficult to try and find an engineering job because he was not a Professional Engineer. It is completely up to the employer to higher an international worker who is seeking registration to become a Professional Engineer. One year of engineering experience is required to register to join APEGA, and APEGA has no impact on the availability of jobs for one to apply. It is known that the Tribunal made assumptions regarding this factor, because there are many unknowns to if Mr. Mihaly did face prima face discrimination and since APEGA has no part in the process of Mr. Mihaly finding employment, it can be stated that this is not a factor.

The issue on justification is that APEGA did not reasonably accommodate Mr. Mihaly. The Tribunal thought Mr. Mihaly should have been individually assessed and not have been judged by a standard exam. Since Mr. Mihaly did not even attempt any of the additional examinations assigned by APEGA, there was no reason for them to produce the resources if he did not put in the effort himself. If Mr. Mihaly had attempted everything that was asked, and then came forward and say he did not think the examinations were a fair way of judging his credentials then an attempt could have been made by APEGA to further help Mr. Mihaly.

The Court of Queen’s Bench reversed the discussion made by the Tribunal that Mr. Mihaly had been discriminated by APEGA.

**Reflection and Opinion**

I will begin my reflection by providing my opinion of the first cases decision. I do not necessarily agree with the decision of the court that the Examination Standard is considered discrimination. That being said, I do somewhat agree with the remedy plan. I do not believe that Mr. Mihaly was unable to become a professional engineer in Canada because of the way he was treated. I believe he is not a professional engineer in Canada because he does not have the proper education. As a Canadian citizen I do agree that everyone should get a fair chance, and obviously it has been a very frustrating time for Mr. Mihaly. He came to Canada assuming he could continue to do the same work as he was doing in Czechoslovakia. It seems quite possible that he could have worked as a technologist in Alberta, as the experts agreed that his education was at a technologist level. In fact, he probably would have fit well as a technologist because his work experience was also considered to be at a technologist’s level. I agree with the decision of the Tribunal that Mr. Mihaly needs help in the form of resource availability and an opportunity to create networks and improve his English. I do not believe an exam that everyone that is categorized as foreign must take is specifically discrimination towards Mr. Mihaly. Our education system is very high in Canada and is also very different across the world. Canadians would need to take exams to work anywhere else in the world, so why is it discrimination when it comes to Mr. Mihaly’s case. For example, my sister achieved her master’s degree in Scotland. To work in Canada, she had to complete exams to confirm that you can practice safely in Canada. It makes sense that if you have an education that is not regulated by the country you are working in, that it needs to be confirmed that you can do the work you say you can do.

When it comes to the 2016 case, I fully agree with the decision of the court. Mr. Mihaly appealed the decision of the previous court and came back for a lot of money. The ruling of the court was to not grant Mr. Mihaly with compensation for loss of income. Mr. Mihaly failed the Exam four times and he even went on record to say that the questions were something he was taught in high school. When it comes to the overall process of admitting a foreign engineer into APEGA I agree with the process. Although it may be tedious, I believe it is fair because the main job of APEGA is to protect the general population. They do so by ensuring engineers have the proper knowledge and education. In Canada we have very high standards when it comes to engineers and it is a right to the people that these standards are enforced for everyone’s safety. If the applicant is not able to prove he can safely practice his profession, then they should not be considered a Professional Engineer. It all comes down to the safety of the people and if it is not certain then APEGA should not approve.

**References**

[1] *Mihaly v. The Association of Professional Engineers, Geologists and Geophysicists of Alberta, AHRC 1 (HUMAN RIGHTS TRIBUNALS OF ALBERTA 2014).*

[2] *Association of Professional Engineers and Geoscientists of Alberta v Mihaly (Court of Queen's Bench of Alberta 2016).*

[3] *Welcome*. (2018). *Albertacourts.ca*. Retrieved 13 February 2018, from https://albertacourts.ca/qb/about/welcome